

Policy No. 84: Gifts and Benefits

POLICY MANUAL

Policy No. 84	Gifts and Benefits
Purpose	The purpose of this Policy is to establish guidelines for the acceptance of gifts, hospitality or benefits by Councillors and Staff, Contractors, Committee Members and Volunteers.
Department	Governance
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POLICY

1. Definitions

<i>Benefit</i>	A non-tangible item which is believed to be of value to the receiver (ie. preferential treatment such as queue jumping, access to confidential information, a decision to act or not act in a particular matter that provide an advantage or and hospitality).
<i>Bribe</i>	A bribe is an offer of money or other inducement made to influence a person in the performance of their duties. Bribery or attempted bribery of a public official is a criminal offence.
<i>Cash</i>	Money, gift or debit cards or vouchers which are readily convertible.
<i>Cumulative Gift</i>	A series of gifts of nominal value from the same person or organisation over a specified period which may have an aggregate value that is significant.
<i>Conflict of Interest</i>	A conflict of interest is a conflict between a person's public duty to act in the best interests of the Council and municipality and their private interests, whether it is financial or non-financial.

A conflict exists whether it is a:

- Real conflict of interest – it currently exists;
- Potential conflict of interest – it may arise, given the circumstances; or
- Perceived conflict of interest – 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 and municipality, now or in the future.

A gift offer that involves a conflict of interest, whether real, potential or perceived can:

- Introduce a personal interest that did not previously exist.
- Encourage a person to prioritise a personal gain over their requirement to act in the public interest.
- Create an intimidation threat from the possibility of a gift offer being made public.

The existence and significance of a conflict will depend on the nature, value, and intent of the gift offer.

Council Officials

Mayor, Councillors, Council staff (including labour hire or otherwise engaged persons) staff engaged through an employment agency), Council Committee members, volunteers and contractors.

Gift

Usually, a tangible item provided at no charge. 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, products, invitations to social functions and tickets to sporting, theatrical or music events.

Gift of Influence

A gift that is intended to generally ingratiate the giver with the recipient for favourable treatment or benefit in the future.

Gift of Gratitude

A gift offered to an individual or department in appreciation of performing specific tasks or for exemplary performance of duties. Gifts to an elected representative or staff member who speaks at an official function may be considered an example of this type of gift of gratitude.

<i>Hospitality</i>	Provision of accommodation, meals, refreshments, event tickets, or some other forms of entertainment.
<i>Nominal Value</i>	The monetary limit of the value of gifts or benefits that may be accepted (ie. total value of gift or benefit received). A gift or benefit is of nominal value when it has no significant or lasting value.
<i>Non-Token</i>	Items that are of a more individual nature, with a value above the nominal value limit. Items may include, free or discounted travel; use of holiday homes; corporate hospitality at major sporting events; free training excursions; tickets to major events and access to confidential information.
<i>Public Interest Disclosure</i>	A disclosure under the <i>Public Interest Disclosures Act 2002</i> , including the provisions in the Meander Valley Council Public Interest Disclosure Procedure.
<i>Significant Value</i>	A gift or benefit that has a value above the nominal value limit.
<i>Token</i>	Often mass produced (ie. pens, calendars, ties or items with a company logo on them), offered in business situations to individuals. Usually have a value under the nominal value limit.

2. Objective

The objective of this Policy is to minimise gift, hospitality or benefit offers made or accepted by officials of the Council. This helps to protect and promote public confidence in the integrity of the Council.

3. Scope

This Policy applies to all gifts, hospitality, or benefits offered to, or received by, all officials of the Council.

Internal gifts received by Councillors or staff from the Council are not covered by this Policy and do not need to be declared; for example, service recognition gifts.

4. Policy

The Council is committed to being open and transparent in its endeavours to achieve the best outcomes for its local community. The acceptance of gifts, hospitality and benefits can create perceptions that the Council's integrity has been compromised.

The Council's Officials must:

4.1 *Acceptance and Declaration*

- Not accept gifts or benefits unless in accordance with this Policy.
- Declare all offers to the General Manager using the approved form, regardless of acceptance.
- Reject anonymous gifts where the giver's identity and address are unknown.
- Refuse any gifts, benefits or hospitality where a real, potential or perceived conflict of interest exists.

4.2 *Ethical Conduct*

- Act ethically, fairly and honestly in all official duties.
- Consult the Council as required.
- Be accountable for actions and ensure decision-making processes are transparent and withstand public scrutiny.
- Do not solicit or use the Council position for personal gain.
- Avoid placing individuals or organisations in a position where they feel compelled to offer gifts to secure or retain business.
- Ensure no higher level of service is provided in exchange for gifts or benefits.

4.3 *Bribery*

Report any instances of bribery or cash offers to the General Manager and comply with relevant legislation.

4.4 *Disclosure Threshold*

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

Part 3A of the *Local Government (General) Regulations 2015* (the Regulations), sets out the requirements for declaration of gifts and donations for Councillors.

Follow the *Local Government (General) Regulations 2015* guidelines for gift and donation declarations, applying these thresholds to all the Council's Officials:

- single gifts or benefits valued at \$50 or more.
- multiple gifts from one source with an aggregate value of \$50 or more.
- disclose any nominal gifts if more than three are received from the same source within six months.

4.5 *Prohibited Gift Offers*

Record all prohibited gift offers to monitor frequency and nature, using the Gifts and Benefits Declaration Form.

4.6 *Conflict of Interest*

The Council's Officials are prohibited from accepting a gift that creates a conflict of interest (real, potential or perceived).

4.7 *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 (ie. a gift of influence).

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 relevant supervisor, General Manager or Mayor.

4.8 *Token and Inconsequential Gifts*

Token and inconsequential gifts may be accepted within limits.

As a single item, gifts or benefits of a token nature that would not create the perception or circumstance of a conflict of interest and include:

- items with a company logo on them, ties, scarves, coasters, diaries, chocolates or flowers;
- books given to individuals at functions, public occasions or in recognition of exceptional work done;
- gifts of single bottles of reasonably priced alcohol given to individuals at functions, public occasions or in recognition of exceptional work done;
- free or subsidised meals of a modest nature and/or beverages provided infrequently (and or reciprocally) that have been arranged for or in connection with the discussion of official business;
- free meals of a modest nature and or beverages provided to officials of the Council who formally represent the Council at work-related events such as training, education sessions and workshops;
- invitations to approved social functions organised by groups such as Council Committees and community organisations where attendance is reasonably associated or in the course of the Council's business; and
- door prizes and raffle prizes at functions or conferences are not considered a gift.

If a Council Official has any doubt if a gift or benefit is token or of nominal value, they should discuss it with a supervisor or in the case of a Councillor, with the General Manager or Mayor.

4.9 *Acceptance for Reasons of Culture or Protocol*

If a gift or benefit of a non-token nature or above nominal value is offered and cannot reasonably be refused (as this action, for example, may cause cultural offence or breach an established protocol), the gift may be accepted.

The offer and receipt of the gift or benefit must be declared on a Gifts and Benefits Declaration and recorded on the Council's Gift Register. The General Manager may use discretion to determine the treatment of the gift.

4.10 *Non-Acceptable Gifts (Non-Token) and Benefits*

Gifts or benefits of a non-token nature include, but are not limited to:

- free or discounted travel;
- use of holiday homes;
- tickets to major sporting events;
- corporate hospitality at a corporate facility or sporting venue;
- free training excursions;
- access to confidential information;
- discounted products for personal use; and
- goods and services provided via a determination in a will or other legal deed.

At times a gift of a non-token nature may be given from an authority (organisation) to another. Such gifts are often provided to a host authority. These 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 authority and therefore the gift is considered to be for the authority, not a particular individual. In such instances the gift is the property of the Council and it to be surrendered to the General Manager who is to determine how it should be treated.

If a Council Official refuses a gift or benefit because they believe that the gift was a deliberate attempt to receive special treatment, then such an instance is to be reported to the supervisor and the General Manager in the case of staff. Councillors should report any instance to the General Manager and Mayor.

4.11 *Money or Equivalent*

Officials of the Council are prohibited from accepting money, this includes gift cards (eg. gift vouchers) or those easily converted into money (eg. shares).

4.12 *Regulatory Processes*

Where a Council regulatory process is underway (eg. a Planning Application or an Infringement Notice appeal), a Council Official is prohibited from accepting any gifts from any individual or group that may be involved with the regulatory activity.

4.13 *Bequests/Wills*

A Council Official is prohibited from accepting any bequests resulting from their position with the Council.

4.14 *Procurement and Tender Process*

A Council Official is prohibited from accepting 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.

Where gifts are received from suppliers or potential suppliers, the Council Official must notify the General Manager and lodge Gifts and Benefits Declaration Form or Register, so their refusal/action can be properly recorded.

4.15 *Hospitality*

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

Hospitality is considered a gift unless the hospitality was reasonable (see reasonable test below) and you were attending the function or event in an official capacity of the Council (see test below).

Hospitality does not constitute a gift if it is paid for by the Council, or by the person receiving the hospitality.

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

Examples:

- a business meeting to discuss matters of the Council at which a meal or refreshments are served; or
- attendance as a Councillor or delegated Committee member on official Council business.

If, however, acceptance of the hospitality is likely to create the impression of compromised impartiality of the Council Official, or could be perceived as a conflict of interest, the offer of hospitality should be politely declined.

Where appropriate, the Council may elect to treat the cost of a meal or other hospitality for a Council Official or their partner as a business cost. This may constitute a fringe benefit. With prior approval from the General Manager, the Council Official may use a Council credit card, or seek reimbursement from the Council for the cost.

4.16 *Reasonableness Test*

The hospitality must be of a standard and type that an independent observer would consider appropriate and not excessive or perceived to be persuasive.

4.17 *Official Capacity Test*

Any hospitality accepted must be clearly aligned with the duty of a Council Official to attend the relevant function or event.

The following offers are likely to be considered excessive, ie. in excess of common courtesy:

- 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 at an industry golf day.

The following offers are not considered excessive beyond common courtesy:

- a cup of coffee at another organisation's premises.
- a modest working lunch, such as sandwiches and pastries, at another organisation's premises.

4.18 *Family Members*

Officials of the Council must take all reasonable steps to ensure that immediate family members and other closely related parties do not receive gifts or benefits as a result of the Council Official's position. This includes gifts or benefits of a non-token nature or gifts or those above the nominal value.

Immediate family members include parents, spouses, de facto relationship, children and siblings.

Closely related parties includes, for example, business partners and close business connections, extended family with a close relationship to the Council Official, and parties with trust-related or other types of fiduciary relationships with the Council Official.

4.19 *Bribes*

Officials of the Council must not offer or seek a bribe. Receiving a bribe is an offence under both the common law and State and Federal legislation.

A Council Official who receives a gift offer that they believe is an attempted bribe must refuse the offer. They must also:

- immediately notify the General Manager;
- ensure that a Gifts and Benefits Declaration Form is lodged, with their refusal properly recorded;
- report the matter as a public interest disclosure in accordance with the Council's Public Interest Disclosure Procedure.

A Council Official who believes another person within the Council may have solicited or been offered a bribe which they have not reported, must notify the General Manager or the Tasmanian Integrity Commission and/or report the matter in accordance with the Council's Public Interest Disclosure Procedure.

4.20 *Records – Gifts and Benefits Registers*

A Gifts and Benefits Register will be maintained by the Governance Department and reported to the Audit and Risk Committee every six months.

This Register will be made publicly available on request and contains the following information:

For the purposes of section 56A (2)(b) of the *Local Government Act 1993*, the following details are prescribed:

- (a) the name of the donor of the gift or donation, if known;
- (b) the relationship to the donor, if known;
- (c) the suburb or locality where the donor resides, if known;
- (d) the date on which the gift or donation was received; and
- (e) the estimated monetary value of the gift or donation.

The content of the Register will be monitored by the General Manager on a regular basis.

4.21 *Disposal of Gifts*

The General Manager or Mayor will determine whether a gift or benefit of a non-token nature should be subject to disposal.

Where a gift should not be retained by the individual, there are options for the disposal of gifts that have been accepted because they could not reasonably be refused. Examples of such circumstances where gifts or benefits may be received include:

- gifts accepted for protocol or other reasons, where returning it would be inappropriate;
- anonymous gifts (received through the mail or left without a return address);
- a gift received in a public forum where attempts to refuse or return it would cause significant embarrassment or cultural offence.

4.22 *Breaches of Policy*

All Council Officials are obliged to comply with this Policy and sanctions may be applied if the Policy is breached.

Any person may report an alleged breach of this Policy by a Council Official to the General Manager or Mayor as appropriate. The General Manager may investigate any report and take such action as is considered necessary in line with legislation, Code of Conduct and other relevant policy and procedure.

5. Legislation and Related Standards

Local Government Act 1993

Local Government (General) Regulations 2015

Code of Conduct for Meander Valley Councillors

Fraud Control Policy and Plan

Public Interest Disclosure Procedure

6. Responsibility

Responsibility for the operation of this Policy rests with the General Manager.