

Category: Governance

Adoption: Council

Date: 22 March 2016

Review period: Two Years

Responsible Manager: Manager Governance and Customer Service

CEO Signature

Date

Purpose / Objective:

The purpose of this Policy is to define the criteria and process for accepting, declaring and allocating gifts received by officers and Councillors.

Scope of this Policy?

This Policy applies to Councillors and officers, including contracted staff.

The Policy does not apply to:

- Councillor receipt of gifts during the election period, as this is covered by provision Section 62 of the Local Government Act (the Act).

Background / reasons for Policy:

Councillors and officers may be offered a gift or hospitality by members of the public, organisations, and/or visitors. Corporate hospitality may be appropriate recognition at an event or for an occasion. However, acceptance of a gift or benefit may be perceived as an obligation or indebtedness by Council to the person(s) offering the gift or benefit.

The Act requires Councillors and officers to declare conflicts of interest when an applicable gift (defined in Local Government regulations) has been received from a person who has an indirect or direct interest in a matter before Council.

The management of a Gift Register and a process for decision making on the appropriateness of retaining and/or using a gift enables Council to reduce the risk of fraud or corrupt decision making.

Policy content:

Gift

Any of the below may constitute the offer of a 'gift' and are defined as gifts within this policy.

- Goods and services given of a commercial value.
- Property (real or otherwise).
- Transfers of money.
- Loans of money or property.
- Free services (accommodation, travel, entertainment, sporting events etc).
- Goods and services made available at discounted prices where such offer is not available to others.
- Hospitality, such as a luncheon, invitation to an event or other similar corporate hospitality (such hospitality may be unplanned).

Gift Acceptance

Money, regardless of amount, is not to be accepted under any circumstances.

Gifts under the value of \$20 are 'token'.

Token gifts do not require declaration or registration, provided they meet the criteria below.

- Gifts of single bottles of alcohol at end of year functions, public occasions, or in recognition of work done (such as providing a lecture/training session/address).
- Refreshments provided infrequently (and/or reciprocally) that are in connection with the discussion of official business.
- Refreshments provided to Council representatives at work related events such as training, education sessions or workshops.
- Refreshments provided at conferences where Council representatives are speakers.
- Ties, scarves, coasters, tie pins, diaries, chocolates, flowers and small amounts of beverages.
- Invitations to appropriate out-of-hours social functions organised by groups such as Council committees or community organisations.

All gifts over the value of \$20 are recorded in the Gift Register, maintained by the Manager Governance and Customer Service (MGCS).

Assessment Criteria

The overriding principle is that no gift shall earn the giver any favourable benefit or advantage.

Councillors and Officers must not accept gifts under any of the following circumstances:

- **Where the gift giver has a current or imminent application to Council or against whom any enforcement action is current or imminent, including health, building and planning permits;**
- **Where the gift giver has a submission entered as part of a procurement process; or,**
- **Where the gift would bring personal profit or advantage to the giver.**

Councillors and officers must consider whether the gift or benefit has created a sense of obligation and should take into account the following considerations as to whether the gift is of a token nature or any hospitality offered is moderate:

- Whether an impartial observer could perceive that the gift was likely to influence Council decision making, actions, or bring about a failure to act in a particular circumstance.
- The scale and value of the gift or hospitality.
- The frequency of the offer.
- The degree of openness associated with the gift or hospitality.

If Councillors or officers believe the gift was a deliberate attempt to receive ‘special treatment’ it must be reported as soon as practicably possible to the Director or Chief Executive Officer.

Declaration and recording of gifts and hospitality

All gifts over the value of \$20 must be declared, as per the processes below, by completing a Gift and Hospitality Register Form and forwarding it to the Manager Governance for registration.

The recipient must acknowledge (in writing) the receipt of the gift. In the case of a Councillor, the CEO EA will formally acknowledge (in writing) the receipt of the gift to the giver on the Councillor’s behalf.

Acknowledgement is to be in writing and must state:

- Appreciation for the goodwill sentiment of the gift and the use to which the gift has been put, for example:
 - The gift has been retained by the officer or Councillor, has been pooled for Council use or officers of a designated work area; or,
 - The gift has been retained by Council and is on display (if appropriate); or,
 - The gift has been allocated for community purposes.

Officer Process

Gift Value	Process	Responsibility
Under \$20	Thank the gift giver, no other action required.	Officer
\$20 - \$50	Complete the Gift Register Form and submit it to Line Manager.	Officer
	Decide to receive the gift or return it, if the gift is to be retained how it will be allocated.	Line Manager
	Finalise the form, advise officer of the outcome and submit the form to Manager Governance and Customer Service.	
	Acknowledge the gift giver.	Officer
	Update the gift register.	MGCS
\$50 - \$100	Complete the Gift Register Form and submit it to the Line Manager.	Officer
	Notify the relevant Director of gift value above \$50	Line Manager
	Decide to receive the gift or return it, if the gift is to be retained how it will be allocated.	Director
	Finalise the form, advise officer and their Line Manager of the outcome and submit the form to Manager Governance and Customer Service.	

Gift Value	Process	Responsibility
	Acknowledge the gift giver.	Officer
	Update the gift register.	MGCS
\$100 or more	Complete the Gift and Hospitality Form and submit to their Line Manager.	Officer
	Notify Director and CEO of gift value above \$100, submit form to the CEO.	Line Manager
	Decide to receive the gift or return it, if the gift it to be retained how it will be allocated.	CEO
	Finalise the form, advise officer, their Line Manager and Director of the outcome and submit the form to Manager Governance and Customer Service.	
	Acknowledge the gift giver.	Officer
	Update the gift register.	MGCS

Councillor requirement to declare any indirect interests as the result of acceptance of a gift

Councillors need to consider if acceptance of a gift will cause them to have an indirect interest in a matter. The following is an extract from the Local Government Act 1989, which provides a definition of an indirect interest.

*Local Government Act 1989- Section 78 c
Indirect interest because of receipt of an applicable gift*

- 1) *In this section, "applicable gift "means one or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person or persons specified in subsection (2) in the 5 years preceding the decision or the exercise of the power, duty or function but does not include—*
 - a) *reasonable hospitality received by the person at an event or function the person attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee; or*
 - b) *a gift, other than an election campaign donation, that was received by the person more than 12 months before the person became a Councillor, a member of Council staff or a member of a special committee.*
- 2) *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.*

Councillors are required to declare any indirect interests and may not participate in discussion of, or in decision making regarding, a matter in which they have an indirect interest. The following is an extract from the Act which describes these requirements.

LOCAL GOVERNMENT ACT 1989 - SECT 79

Disclosure of conflict of interest

- 1) *If a Councillor or member of a special committee has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or the special committee, the Councillor or member must, if he or she is attending the meeting, disclose the conflict of interest in accordance with subsection (2).*
- 2) *A Councillor or member of a special committee who has a conflict of interest and is attending the meeting of the Council or special committee must make a full disclosure of that interest—*
 - a) *by either—*
 - i) *advising the Council or special committee at the meeting of the details required under paragraphs (b) and (c) immediately before the matter is considered at the meeting; or*
 - ii) *advising the Chief Executive Officer in writing of the details required under paragraphs (b) and (c) before the meeting; and*
 - b) *classifying the type of interest that has given rise to the conflict as either—*
 - i) *a direct interest; or*
 - ii) *an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, 78D or 78E; and*
 - c) *describing the nature of the interest; and*
 - d) *if the Councillor or member advised the Chief Executive Officer of the details under paragraph (a)(ii), the Councillor or member must make a disclosure of the class of interest only to the meeting immediately before the matter is considered at the meeting.*
- 3) *For the purposes of section 79(2)(a)(i), if a Councillor or member of a special committee has a conflict of interest in two or more matters which are to be considered or discussed consecutively at a meeting of the Council or the special committee, the Councillor or member may make a full disclosure of each of those interests immediately before the first matter is considered at the meeting.*
- 6) *While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must—*
 - a) *leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and*
 - b) *remain outside the room and any gallery or other area in view or hearing of the room.*
- 7) *The Mayor or the Chairperson of the special committee must cause the Councillor or member of a special committee to be notified that he or she may return to the room after—*
 - a) *consideration of the matter; and*
 - b) *all votes on the matter.*
- 8) *If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson must record in the minutes of the meeting—*
 - a) *the declaration of the conflict of interest; and*
 - b) *the classification of the interest that has given rise to the conflict, and if the Councillor or member has disclosed the nature of the interest to the meeting, the nature of the interest.*

- 9) *Unless section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence and liable to a fine not exceeding 120 penalty units.*

Gift Value	Process	Responsibility
\$20 or more	Accept the gift, or return it to the giver.	Councillor
	If accepting the gift, complete the form and submit to the CEO EA.	Councillor
	Acknowledge the gift giver on behalf of the Councillor.	CEO EA
	Update the gift register.	MGCS

Responsibilities:

Council officers must declare all gifts over the value of \$20 and complete a Gift and Hospitality Form.

Councillors must declare any indirect interests and refrain from participating in decision of, or in decision making regarding, a matter in which they have declared an indirect interest.

Related Policies:

Councillor Code of Conduct
Election Period Policy
Staff Code of Conduct

Relevant Legislation:

Local Government Act 1989