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Policy:

Gifts and Benefits

2019

INFORMATION ABOUT THIS DOCUMENT

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Further Document Information and Relationships

List here the related strategies, procedures, references, policy or other documents that have a bearing on this Policy and that may be useful reference material for users of this Policy.

Related Legislation*	Local Government Act 1993 Local Government (General) Regulation 2005 Independent Commission Against Corruption Act 1988
Related Policies	Code of Conduct 2019
Related Procedures/ Protocols, Statements, documents	Independent Commission Against Corruption (ICAC) – “Managing Gifts and Benefits in the Public Sector – Toolkit”. Procedures for the Administration of the Code of Conduct 2019

Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.

TABLE OF CONTENTS

1. OBJECTIVES	2
2. SCOPE	2
3. DEFINITIONS.....	2
4. MANAGEMENT OF GIFTS AND BENEFITS.....	2
4.1 Token Gifts, Hospitality or benefits.....	3
4.2 Gifts, hospitality or benefits of more than token value.....	4
4.3 Cultural considerations or official functions.....	4
4.4 Prizes and incentive schemes	5
4.5 Gift, hospitality or benefit process.....	5
4.6 Return and disposal of gifts or benefits of more than token value.....	5
4.7 Restrictions on acceptance by certain Council officials.....	6
4.8 Giving gifts or benefits to other agencies or officials.....	6
4.9 Loyalty Programs.....	6
4.10 Breaches of this Policy	6
5. GIFTS AND BENEFITS REGISTER.....	6
6. PERFORMANCE INDICATOR.....	7

DRAFT

1. OBJECTIVES

In the course of their public duties, both Councillors and staff may encounter situations in which they are offered gifts or benefits for a variety of reasons. The Gifts and Benefits Policy provides guidance for appropriate actions in relation to offers of gifts, hospitality or benefits. This Policy also provides clarity around its provision under the Code of Conduct, and ensures the appropriate mechanisms are in place to protect the integrity, security and reputation of Council as well as protect the reputation of the Council Official.

2. SCOPE

This Policy applies to all Council officials.

3. DEFINITIONS

Council Officials – includes Councillors, members of staff of council, Council committee members, conduct reviewers, delegates of Council and volunteers.

ICAC defines 'gifts' and 'benefits' as follows:

Gifts – In a private context, gifts are usually unsolicited and meant to convey a feeling on behalf of the giver, such as gratitude. There is ordinarily no expectation of repayment. Gifts given in a private context are not the focus of this publication.

"Gifts are also offered to individuals in the course of business relationships. Such gifts are usually given for commercial purposes, for example, to create a feeling of obligation in the receiver. Some examples of these sorts of gifts are:

- Money
- Alcohol
- Clothes
- Products
- Tickets

Benefits – The term "benefit" is used to refer to something which is believed to be of value to the receiver, such as a service. Examples include:

- Discount on Purchases
- Priority in allocation of goods or services, ie tickets, etc
- Any form of preferential treatment

4. MANAGEMENT OF GIFTS AND BENEFITS

It is acknowledged that Council officials may at times be offered gifts, hospitality or benefits during the course of their duties; however, it is important to understand that the offering of such items may give the impression that Council has been unduly influenced in its decision making process, or is providing preferential treatment to individuals or organisations, giving rise to an actual, perceived or potential conflict of interest.

Council officials must avoid situations in which the appearance may be created that any person or organisation, through the provision of hospitality and other gifts or benefits of any kind, is securing or attempting to secure a favour from that Council official and Council.

Gifts should generally not be accepted, that said any offer or acceptance of a gift, hospitality or benefit of any value must be disclosed. Council has established an electronic gifts register which requires Councillors and staff to declare any gift or benefit they may receive. This includes whether or not the gift or benefit was accepted or declined.

Council's Code of Conduct outlines the standards of conduct expected of all Council officials. This Policy aims to ensure that Council performs its public functions fairly and impartially in accordance with the Code. Staff must be aware of their obligations under the Code, and should at all times adhere to them. Failure to adhere to this Policy may be considered a breach of the Code and result in disciplinary action.

In accordance with the Code of Conduct, the following principles also apply:

You must not:

- Seek or accept a bribe or other improper inducement
- Use your position to influence others or take advantage of your status or position in the performance of your duties in order to obtain private benefit for yourself or somebody else.
- Seek gifts or benefits of any kind. You must not solicit cash and cash-like gifts, hospitality and benefits of any value or kind.
- Accept any gift or benefit that may create a sense of obligation on your part or which may be perceived to be intended or likely to influence you in carrying out your public duty
- Accept any gift or benefit of more than token value unless there are special circumstances and approval has been obtained - for staff from your relevant Director/Manager or the General Manager; for Councillors from the Mayor
- Accept an offer of money or 'cash-like gift', regardless of the amount. A 'Cash-like gift' includes, but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts
- Have immediate family members or relatives accept gifts, hospitality or benefits on your behalf.

Any suspected bribery attempts, including the offer of cash or a cash-like gift, must be reported to the General Manager immediately. The General Manager will inform the Independent Commission Against Corruption (in accordance with the Independent Commission Against Corruption Act 1988) and the Police, if appropriate.

Councillors must also consider their disclosure obligations when completing their Disclosures by Councillors and Designated Persons Return required under the Local Government Act. If the value or cumulative value of gifts, hospitality or benefits, from one donor should exceed the amount of \$500 in the return year, the Gifts Section of the Return Form must be completed by the recipient, in addition to the recipient making the declaration of such gifts or benefits in Council's Gifts and Benefits Register.

4.1 Token gifts, hospitality or benefits

Wherever possible, Council officials are encouraged not to accept gifts, hospitality or other benefits of any kind. A token gift, hospitality or other benefit (other than money or cash-like gift) may be accepted by a Council official subject to the restrictions on acceptance by certain Council officials as outlined in this Policy, provided the intent of the gift or benefit is in accordance with this Policy and reported using Council's Gifts and Benefits Register.

Token gifts can be viewed as being

- of no significant monetary value (less than \$25.00)
- presented to a number of persons in a delegation
- inconsequential or trivial and not offered on a regular basis
- not likely to be seen as compromising

Should a low value gift or benefit (such as chocolates) be offered on a regular basis, then consideration should be given as to why the gift is being offered. For example;

- is it for the purposes of placing the recipient in a position of having a sense of obligation to the gift giver?
- as an inducement to continue to place orders or work with the gift giver for future favourable treatment for the gift giver

Where Council officials are concerned that the intent of an offer may be inappropriate, the gift, hospitality or benefit should not be accepted.

Token value for the purposes of this Policy is considered to be up to a maximum of \$25 in value.

Examples of what may be regarded as a token gift or benefit includes but is not limited to:

- Gifts of single bottles of alcohol to individual council members
- Official functions, public occasions or in recognition of work done (such as providing a lecture/training, session/address)
- Lucky door/ticket prizes won at conferences
- Food stuffs – cake, biscuits, lollies

4.2 Gifts, hospitality or benefits of more than token value

Gifts, hospitality or benefits of more than token value are those greater than \$25 in value.

Wherever possible, Council officials are encouraged not to accept gifts, hospitality or other benefits of more than token value, however in instances where gifts are unable to be refused the gift will be disclosed and managed in accordance with the process outlined in this Policy.

4.3 Cultural considerations or official functions

Council officials often conduct official business with agencies and organisations, where gifts and hospitality are offered to express appreciation and good will. Every effort should be undertaken to ensure that gifts or benefits are refused with a proper explanation, courtesy and due regard to cultural sensitivities. In instances where such offers are unable to be refused or returned as it may be considered offensive or cause embarrassment; gifts must be entered into Council's Gifts & Benefits Register and surrendered to Council for appropriate action. Legitimate invitations of hospitality will not be seen as a breach of this Policy or Code of Conduct.

On occasion however, and as a demonstration of Council's recognition and support for the contributions that local clubs make to the community, the Mayor, Councillors and General Manager or their delegate may attend local community and sporting events, including for professional and semi-professional level sporting teams. This does not include invitations to functions and events hosted by suppliers or third parties.

Where conducting official business, the Mayor, Councillors and General Manager or their delegate may attend work related functions to further the business interests of Council.

Any legitimate invitation is in recognition of their official roles as Council Officials. Attendance at such events will not be seen as a breach of this Policy or Code of Conduct, provided Council Officials act in accordance with their responsibilities under the Code. However, attendance at these should be recorded in Council's Gifts & Benefits Register.

4.4 Prizes and incentive schemes

Council officials must not enter competitions or receive incentives (such as additional frequent flyer points), gifts or prizes sponsored by persons or organisations that have business dealings with Council. Any prizes or incentives that may create a sense of obligation and affect their discretionary judgement as a Council official should be avoided. Instances where this occurs should be recorded in the Gifts and Benefits Register.

Receipt of an unexpected prize win, such as a lucky door prize or similar gift, while attending a function, conference or seminar in an official capacity should be disclosed in Council's Gifts and Benefits Register. All gifts and benefits given to Council officials in their official capacity are technically the property of Council and must be surrendered.

4.5 Gift, hospitality or benefit process

All offers irrespective of whether they were rejected or accepted must be reported in Council's Gifts and Benefits Register. Offers that have been received will be actioned at the discretion of the The Executive Manager Corporate Services, and may be returned, redistributed or disposed of.

The Executive Manager Corporate Services will monitor the Gifts and Benefits Register and all Gift and Benefit Disclosure forms completed by Council officials.

4.6 Return and disposal of gifts or benefits of more than token value

If a gift or benefit of value is to be returned in person, this should preferably be done in the presence of a witness. Details of the circumstances and details of the nature and value of such gift or benefit must be entered into the Gifts and Benefits Register. Similarly, offers of hospitality that have more than a token value should be courteously refused and also included on the Gifts and Benefits Register.

If a gift or benefit is received by a Council official, which should not be accepted by the Council official and cannot reasonably be returned to the donor, the gift or benefit must be disposed of by Council in a transparent manner.

Some options for the management of the gift or benefit include:

- a) Sharing the gift amongst all staff (such as perishable items)
- b) Donation to the Council Social Club (for non-perishable items or gifts of alcohol)
- c) The running of a raffle or an auction with the proceeds going to a charity

The preferred method of disposal will be at the discretion of the General Manager and Executive Manager Corporate Services.

4.7 Restrictions on acceptance by certain Council officials

Council officials, who are involved in exercising regulatory and procurement processes, **are prohibited under any circumstances to accept gifts, hospitality and benefits of any kind**, where the staff are dealing with persons seeking a decision from Council, or who have sought a decision from Council.

Council officials who fall within this category include Town Planners, Development Assessment Officers, Compliance Officers such as Rangers and Parking Control Officers and staff who are involved in procurement and tendering (including the evaluation of tenders or other proposals), leasing functions or disposal of assets.

Any offer of a gift or benefit made by an external party in an actual or perceived attempt to bribe a Council official must be refused, and the offer disclosed and recorded in Council's Gifts Register.

4.8 Giving gifts or benefits to other agencies or officials

There may be occasions when it is appropriate for Council officials to give gifts or benefits to individuals from other public or private bodies, such as a modest token of appreciation or a presentation of a gift for protocol reasons. Permission for the giving of gifts or benefits by Council Officials must be obtained from the General Manager.

4.9 Loyalty Programs

It is not uncommon that businesses will offer inducements for customers to receive a benefit for return business. This could include cash back programs, free gifts or a saving on future purchases. It is inappropriate for both councillors and staff to convert a benefit received from a loyalty program as a result of council business for their own personal use. This also includes frequent flyer programs.

Councillors and staff should not obtain a private benefit from the provision of equipment and facilities and this includes travel hours that accrue from Council funded travel through "frequent flyer" schemes or any other loyalty programs. Where such benefits accrue, then free flights or other subsidised travel should benefit Council.

4.10 Breaches of this Policy

Any breaches of this Policy could constitute a possible act of misconduct, and may lead to disciplinary action under the Code of Conduct. Serious breaches by Council officials such as soliciting, or attempt to solicit, or knowingly accepting a bribe, will be reported to the Mayor or General Manager for referral to the Independent Commission Against Corruption.

5. GIFTS AND BENEFITS REGISTER

An Electronic Gifts and Benefits Register has been established to enable Councillors and staff to record, where appropriate, gifts and benefits which have been received by them and/or to the Council. Registration of gifts or benefits not accepted should also be included into the register. The register contains the following:

- Name and title of person receiving the gift or benefit, either for personal or Council use
- Name and title of person giving the gift
- Description of gift
- Acceptance or refusal of the gift or benefit

- What was done with the gift or benefit
- Value of gift (if known)
- Reason for presentation of gift

Councillors and members of staff must record all (non-token–high value) items received in the Gifts and Benefits Register. The inclusion of an entry in this Register does not relieve Councillors or staff from their obligations to make disclosures in association with annual Disclosure Returns required of Councillors and designated persons under Section 449 (3) of the Local Government Act.

Councillors must declare any gifts they receive to the General Manager’s Senior Executive Officer who will then enter this into Council’s Electronic Gifts Register.

6. PERFORMANCE INDICATOR

Gifts and benefits offered to Councillors and or members of staff are registered appropriately in the electronic Gifts and Benefits Register.

Internal audit of the Gifts and Benefits Register does not find non-compliance in relation to this Policy.

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