

## POLICY NO LG50 GIFTS AND BENEFITS POLICY

<b>DEPARTMENT:</b>	Governance
<b>RESPONSIBLE OFFICER:</b>	General Manager
<b>LINK TO STRATEGIC PLAN:</b>	.... be visionary and accountable leaders who advocate and represent the views of our community in a transparent way.
<b>STATUTORY AUTHORITY:</b>	Code of Conduct Local Government Act 1993
<b>OBJECTIVE:</b>	<p>The purpose of this policy is to:</p> <ul style="list-style-type: none"> <li>• Outline the obligations and responsibilities of Council's officials when dealing with offers of gifts or benefits</li> <li>• Assist Council officials make appropriate judgements in relation to gifts and benefits and therefore avoid being placed in a situation where they may become vulnerable to undue influence or threaten community confidence in the fairness, impartiality and integrity of the Council.</li> </ul>
<b>POLICY INFORMATION:</b>	<p>Adopted 16 March 2015 – Minute No. 03/15.11.6.64  Amended 20 May 2019 – Minute No. 05/19.16.9.124  Amended 19 February 2024 – Minute No. 02/24.17.3.317</p>

## POLICY

### PURPOSE

The purpose of this policy is to:

- Outline the obligations and responsibilities of Council's officials when dealing with offers of gifts or benefits and to
- Assist Council officials make appropriate judgements in relation to gifts and benefits and therefore avoid being placed in a situation where they may become vulnerable to undue influence or threaten community confidence in the fairness, impartiality and integrity of the Council.
- Council officials are defined as Mayors, Councillors, Council staff (including staff engaged through an employment agency), Council committee members, volunteers and contractors.

### SCOPE

The policy applies to all gifts and benefits offered to or received by all Council officials in their role as officers of the Council.

### LEGISLATION

The particular legislation relevant to this policy is the Tasmanian *Local Government Act 1993*. Section 339A specifies penalties in relation to the misuse of office by councillors and employees; Division 3A deals with the Code of Conduct for councillors, section 62 identifies the functions and powers of the general manager. The Local Government (General Regulations) 2015 PART 3A specifies the nominal amount, notice details and timeframes and Register details.

This policy should be read in conjunction with any other relevant State and Federal legislation.

## APPLICATION

In a private context gifts and benefits 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 policy.

Gifts and benefits may also be offered to individuals in the course of business relationships. Such gifts and benefits are often given for commercial purposes and serve to create a feeling of obligation in the receiver. Gifts and benefits given in the course of business relationships is the focus of this policy.

The policy is to be applied in conjunction with the provisions of the Local Government Act 1993 and with n Council's Codes of Conduct Policy and other relevant Council policies and procedures.

## DEFINITIONS

**Council official** – Mayors, Councillors, Council staff (including staff engaged through an employment agency), Council Committee members and volunteers.

**Gift** – is 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, clothes, products, invitations to social functions and tickets to sporting, theatrical or music events.

**Cumulative gift** – 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.

**Gift of influence** – a gift that is intended to generally ingratiate the giver with the recipient for favourable treatment 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 staff who speak at official functions may be considered an example of gifts of gratitude.

**Benefit** – a non-tangible item which is believed to be of value to the receiver (i.e. preferential treatment such as queue jumping, access to confidential information and hospitality)

**Hospitality** – the provision of accommodation, meals, refreshments or other forms of entertainment.

**Bribe** – a gift or benefit given specifically for the purpose of winning favours or to influence the decision or behaviour of a Council official to benefit someone or something.

**Cash** – money or vouchers which are readily convertible

**Nominal value** – is the monetary limit of the value of gifts or benefits that may be accepted (i.e. total value of gift or benefit received). A gift or benefit is of nominal value when it has no significant or lasting value

**Significant value** – a gift or benefit that has a value above the nominal value limit.

**Token** - often mass produced (i.e. 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.

**Non token** – 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.

**Conflict of interest** – any situation in which an individual or corporation (either private or government) is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit.

**Public perception** – the perception of a fair-minded person in possession of the facts

**Gifts and Benefits Declaration Form** – a form to be completed (example template at attachment 1), when an individual receives a gift or benefit of a non-token nature above the nominal limit or receives a series of token gifts or benefits in a specified time that may have significant aggregate value (Cumulative Gift)

## **POLICY STATEMENT**

### **1. GENERAL**

Council officials at all times and in all circumstances must be seen to be fair, impartial and unbiased.

Council officials should actively discourage offers of gifts and benefits and must not solicit gifts or benefits.

Council officials must not take advantage of their official position to secure an unreasonable personal profit or advantage.

People doing business with the Council should be encouraged to understand that they do not need to give gifts or benefits to Council officials to get high quality service.

From time to time Council officials may be offered gifts or benefits. In some limited circumstances gifts and benefits may be accepted. Token gifts of nominal value may generally be received. Non – token gifts of significant value should not generally be accepted.

Council officials should at all times be aware of the wider situation in which an offer of a gift or benefit is being made. For example, Council officials should consider whether the donor is in, or may be seeking to enter into, a business relationship with Council or may be applying to Council in relation to the exercise of Councils functions.

Council officials must avoid situations that suggest that a person or body, through the provision of gifts or benefits is attempting to secure favourable treatment from Council.

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

### **2. ACCEPTABLE GIFTS AND BENEFITS**

Gifts or benefits of a token nature at or below nominal value may generally be accepted by Council officials without disclosing details to a supervisor, General Manager or Mayor, and without declaring the gift or benefit for inclusion on Council's Register.

That said, Council officials who receive more than the specified number of token gifts of a nominal value from the same person or organisation, in a specified period must disclose that fact in the gifts and benefits register.

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, General Manager or Mayor.

## **2.1 Token gifts and benefits**

Gifts or benefits of a token nature do not create the appearance of a conflict of interest and include:

- Items with a company logo on them, ties, scarves, coasters, diaries, chocolates, 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 Council officials who formally represent 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

## **2.2 Nominal value**

For the purpose of this policy the current nominal value limit is \$50. Council officials who receive gifts of a token nature from the same donor where the aggregate monetary value of the series of gifts or donations in a financial year is \$50 or more must disclose that fact in the gifts and benefits register.

## **3. NON ACCEPTABLE GIFTS AND BENEFITS**

Accepting gifts of money is strictly prohibited. This includes gift cards or anything that may be used in place of cash/currency.

Council officials should generally not accept gifts or benefits that appear to be non-token in nature or more than of a nominal value.

If a gift or benefit of a non-token nature or above nominal value is offered and cannot reasonably be refused (as this action may cause embarrassment), the offer and receipt of the gift or benefit must be declared via completion of a Gifts and Benefits Declaration Form (attachment 1) and the details must be recorded on the Council Gift Register.

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 instances are to be reported to a supervisor, the General Manager or Mayor.

### **3.1 Non-token gifts and benefits**

Gifts or benefits of a non-token nature include:

- 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
- Goods and services provided via a determination in a Will

At times, a gift of a non-token nature may be given from one authority 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.

### **3.2 Significant value**

For the purpose of this policy a gift or benefit with significant value has a value above the specified nominal value limit.

## **4. 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. (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.

## **5. BRIBES**

Council officials must not offer or seek a bribe. A person offered a bribe should refuse it and report the incident as soon as possible to their supervisor, General Manager or the Mayor (in the case of Councillors). Council will take steps to report the matter to Police immediately.

Receiving a bribe is an offence under both common law and Tasmanian Legislation.

## **6. FAMILY MEMBERS**

Council officials must take all reasonable steps to ensure that immediate family members do not receive gifts or benefits of a non-token nature or gifts or benefits above the nominal value. Immediate family members include parents, spouses, children and siblings.

## **7. RECORDS – GIFTS AND BENEFITS REGISTER**

Council officials, who receive more than the specified number of token gifts or benefits near the nominal value limit from the same person or organisation, (cumulative gift) must disclose that fact.

The employee's supervisor undertakes the initial assessment as to whether the gift or donation should be retained or disposed of by the employee, or other course of action. Further assessment is undertaken by the employee's Manager, with final determination of retention or disposal of the gift or donation at the discretion of the General Manager.

The employee must disclose details of any gifts or donations accepted on the Gifts and Benefits Declaration Form within 14 days of receipt of the final gift.

These details are then entered into the Gifts and Benefits Register.

Councillors are also required to declare any gifts and donations received. Councillors are required to complete a Gifts and Donations Declaration form. Approval for the retention or disposal of gifts and donations by a Councillor is also at the discretion of the General Manager.

The Register of Gifts and Benefits received by Councillors is available on Council's website for public inspection, in accordance with section 56B of the Local Government Act 1993. The content of the Register will be monitored by the General Manager

The content of the Register for Gifts and Benefits received by Council employees is not publicly available, but is monitored by the Mayor on a quarterly basis to ensure that no conflicts of interest or contraventions of this Policy occur or are likely to occur.

## **8. DISPOSAL OF GIFTS**

A supervisor, General Manager or Mayor will determine the appropriateness of disposing of a gift or benefit of a non-token nature.

There are options for the disposal of gifts that have been accepted because they could not reasonably be refused, but should not be retained by an individual. 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.
- A gift or benefit of significant value provided to a Council official through a Will, where the relationship between the giver and recipient was essentially a Council related business relationship.

Options for disposal include:

- Surrendering the gift to Council for retention
- Distributing the gift or benefit amongst a selection of Council's officials - where a reasonable person would agree that the allocation was appropriate (public perception)
- Donating the gift to an appropriate charity

## **9. 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 an official of the Council to the General Manager or Mayor as appropriate, who shall investigate any report received and take such action as is considered necessary.

If this policy has been breached, such action may include counselling, censure motions, disciplinary action (including termination of employment), the laying of charges and the taking of civil action

## **10. MONITORING AND REVIEW**

This Policy will be reviewed at least every four (4) years, following the conducting of Local Government elections or earlier in the event of major changes to legislation or related policies, procedures or if deemed necessary by the General Manager.

### GIFTS AND BENEFITS DECLARATION FORM

Name	
Department	
Date gift offered	
What is the gift?	
What is the dollar value (approximate) of the gift?	
Who is the gift from?	
Individual (provide name)	
Organisation (provide name)	
Where was the gift offered? (i.e. at a function, over the counter, through the mail, at a meeting....)?	
Recipients relationship to the donor	
Should the gift or benefit accepted or declined	
If the gift was accepted, should it be retained by the employee or organisation?	
If the gift was retained by the organisation should it be disposed?	
Council Official's signature	
Date	
<hr/>	
Responsible Officer (Supervisor, General Manager, Mayor) comments	
Responsible Officer's name and signature	
<hr/>	
Office Use	
Date details recorded on Gifts and Benefits Register	
Department EA's signature	