

## Gifts and Benefits Policy

**7 December 2016**



## ***Gifts and benefits***

Never accept gifts of money

Never solicit gifts and benefits

Don't accept gifts and benefits

A thank you is enough

Declare all offers

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Gifts and Benefits Policy

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# 1 Introduction

In the course of their duties, council officials may encounter situations in which they are offered gifts or benefits for a variety of reasons.

In dealing with any gifts or benefits, officials must ensure that, not only do they not influence them in the performance of their duties, but also that there cannot be any public perception of undue influence due to these offers.

Ratepayers and residents of Council have a right to expect the business of the Council is conducted with efficiency, fairness, impartiality and integrity. Council officials have an obligation to carry out their duties conscientiously, honestly and objectively.

The purpose of this document is therefore to set policy and provide guidelines for councillors, staff and other council officials in relation to this most important issue.

## 2 Scope

This policy relates to all gifts and benefits offered to council officials of Council. It is particularly relevant for staff involved in dealing with members of the public and the private sector in such areas as:

- providing services
- granting leases and licences
- regulation, including inspections and granting approvals
- assessment of development applications
- purchasing goods and services, including assessing of tenders
- engaging consultants.

## 3 Overview

### 3.1 Code of Conduct

Council's *Code of Conduct* has a specific section dealing with 'Personal Benefit'. It is noted that this policy provides further guidance in its application of 'gifts and benefits' issues.

### 3.2 Definitions

The Independent Commission Against Corruption (ICAC) in its publication *Managing Gifts and Benefits in the Public Sector 2006*, 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, for example to express congratulations or gratitude. There may be a custom of reciprocity for gifts given at birthdays and other times, but they are not generally given to create a sense of obligation in the recipient.

In a business context, however, gifts are frequently given to facilitate an ongoing working relationship and to establish patterns of loyalty to the giver. The sense of

obligation that business gifts instil is the main difference between private gifts and business gifts.

In between these two are the more complicated scenarios in which gifts may be offered as a genuine expression of appreciation, or as a gesture of pure goodwill, such as those given on special occasions, but in a business context.

The important issue to consider is whether the acceptance of the gift could compromise the recipient's ability to act objectively and impartially towards the giver. This is not an area with simple solutions, particularly where not just actual, but the perception of, compromise may be damaging.

Some common examples of gifts that may be offered in the course of work include:

- alcohol
- clothes
- products
- tickets
- office or business accessories.

### ***Benefits***

Benefits are different to gifts in that they are generally non-tangible. They may still have financial value however, particularly to their recipients. In terms of managing them, gifts and benefits should be considered interchangeable.

Some common examples of benefit are:

- access to private spectator boxes at sporting venues
- a new job or a promotion
- preferential treatment, such as queue jumping
- access to confidential information
- relationship with a council contractor that provides a discount for private work.

Gifts and benefits that are exchanged within the business context can be categorised as one of following types:

### ***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 agency in appreciation of performing specific tasks or for exemplary performance of duties. Gifts to staff who speak at official functions would be considered gifts of gratitude.

### ***Token gift***

A gift that is of minimal value offered in a business situation to an agency or council official representing an agency. Such gifts are often small office or business accessories such as pens, calendars, folders, with an inscribed company logo. They are usually mass-produced rather than personalised. [The receipt of token gifts are not permitted in normal circumstances under this policy.]

***Ceremonial gift***

An official gift from one agency to another. Such gifts are often presented to a host agency by delegates from another agency during or at the end of official business. These gifts may sometimes be an expression of gratitude, usually for the work of several people in the agency. Such gifts may therefore be considered as gifts to the agency as a whole, rather than to a particular individual.

Other definitions:

***Bribe***

A gift or benefit offered to or solicited by a council official to influence that person to act in a particular way.

***Council official***

An individual who carries out public official functions or acts in a capacity of a council official and includes councillors, employees (permanent, temporary, casual), council committee members, and others fulfilling responsibilities on behalf of Council.

***Community based (not-for-profit) organisations***

An organisation that is not carried on for the purposes of profit or gain to its individual members nor allowed to make any distribution, whether in money, property or otherwise, to its members. Any profit made by the organisation goes back into the operation of the organisation to carry out its purposes.

### **3.3 Perceptions**

It is important to manage perceptions in relation to gifts and benefits. Often the intended recipient may not know the intentions of the gift giver or the intentions may be different from the public perception of the situation.

It is often the case that the perception of the gift-giving relationship is that the gift could influence the intended recipient's performance of his or her official function, despite the fact that such perceptions alone may not indicate an actual inappropriate influence.

Perceptions can be affected by various factors:

- *The relationship between the gift giver and the council official.* If the council official is, for example, a regulator of the person offering the gift or benefit, or is about to make a decision which could affect the interests of the person offering the gift or benefit, it is more likely that the gift would be perceived as inappropriate.
- *Transparency and openness.* If a gift is offered to a council official in a public forum, it is less likely to be perceived as a gift of influence than if it were offered in a private context.
- *The value of the gift.* Expensive gifts are more likely to be perceived as gifts to win favours. In determining the value of the gift or benefit, any previous gifts given by an individual or agency to the council official (or to colleagues serving the same functions) should be considered, to calculate their cumulative value. While the perception that one gift may not be considered sufficient to cause an

employee to act outside his or her official duty, the sum of multiple gifts may be considered sufficient to do so.

### 3.4 Consequences

If gifts and benefits are not managed appropriately there can be a range of negative consequences for both the individual and Council.

The consequences for individual council officials may be:

- embarrassment
- disciplinary action
- being the subject of an internal or external inquiry
- loss of employment
- criminal prosecution.

The consequences for Council may be:

- embarrassment for the organisation
- loss of public trust
- being the subject of an external enquiry
- legal action.

### 3.5 Bribes

Offering or accepting a bribe is a special case in relation to gifts and benefits that has particularly serious consequences.

If a council official is offered a gift of money or other gift or benefit, which he or she believes is meant to be a bribe, the official must immediately notify his or her supervisor. Council's General Manager has an obligation under the ICAC Act to inform the Commission about any matter that he or she suspects on reasonable grounds concerns or may concern corrupt conduct, including bribery.

The Commission's brochure on bribery<sup>1</sup> details the steps to be taken should a council employee be offered a bribe or otherwise suspects that bribery has occurred.

A gift or benefit offered or sought in order to influence a council official's behaviour is a bribe and such persons may be guilty of an offence under section 249B of the Crimes Act 1900 and subject to a gaol term.

## 4 Core policy statement

In common with other public sector agencies, Council's policy on gifts and benefits is:

- If a council official is offered a bribe, the incident must immediately be reported to (their supervisor and) the General Manager. ICAC, and where relevant, the police, must be informed immediately. For further information refer to the ICAC brochure *Bribery, corrupt commissions and rewards*, 2006.

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<sup>1</sup> ICAC 2006, *Bribery, corrupt commissions and rewards*

- Soliciting personal gifts or benefits is strictly prohibited under all circumstances. If a council official becomes aware of another council official soliciting gifts or benefits, he or she should report it immediately to (their supervisor and) the General Manager, who should inform the ICAC through a section 11 report.<sup>2</sup>
- Gifts that may not be outright bribes but are nevertheless suspected of being offered for the purposes of influencing a council official's behaviour in his or her official capacity are always to be declined. In such circumstances the incident should be notified to (the supervisor and) the General Manager, who should consider whether to make a section 11 report to ICAC.
- The acceptance of any offer of money (or equivalent) is strictly prohibited in all cases, since in all likelihood such a gift would be perceived as an attempt at bribery. 'Money' includes any form of credit or cash-like gift such as, but not limited to cash, cheques, money orders, bank deposits, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts, regardless of the amount or value. This situation includes offers of money to cover expenses for trips to view samples of work, or to expedite the work of Council.

If an official is offered a gift of 'money', it is to be refused and the incident reported immediately to (their supervisor and) the General Manager and declared in accordance with this policy. Any such gift that is received without the recipient's knowledge, for example in the mail, must immediately be reported and declared, and every effort made to return it.

In addition, and taking into account the issues of perception, negative consequences and current developments, the thrust of Council's policy is 'gifts and benefits not accepted' as far as is practicable. Accordingly Council also requires:

- In normal circumstances, all gifts and/or benefits offered to a council official of Council are to be declined. No gift or benefit should be personally retained by a council official.
- Notwithstanding the above requirement there are provisions for special circumstances:
  - situations that relate to protocol, cultural aspects, sister-city relationships, international delegations and the like
  - hospitality associated with events and functions hosted by community based (not-for-profit) organisations, attendance at which is consistent with the council official's role – in particular the statutory role of a councillor
  - insignificant gifts / benefits associated with hospitality, promotional materials and other situations described in this policy.,
- All gifts offered are to be formally declared, and subsequent actions determined (if required), and the details entered into Council's *Gifts and Benefits Register*.

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<sup>2</sup> Under section 11 of the ICAC Act, principal officers are obliged to report suspected corrupt conduct to ICAC.



## **5 Typical ‘gift and benefit’ situations**

To assist council officials in properly identifying the extent of gifts and benefits under the policy, and the typical situations in which they may be offered, the following further guidance is provided:

### **5.1 Token value**

Previous policies defined ‘token gifts’ as those whose estimated value was below a certain amount. This policy does not distinguish types of gifts by value – all of which in normal circumstances are to be declined and declared.

### **5.2 Gifts to family members and colleagues**

As with gifts offered directly to the council official, gifts given to family members and business colleagues may be viewed as affecting the official.

Council officials must take all reasonable steps to ensure that business colleagues and family members do not receive gifts and benefits that give rise to the appearance of being an attempt to secure favourable treatment. Family members ordinarily include close family connections, including those by marriage.

Council will treat gifts and benefits to family members and business colleagues in the same way as those to the council officials themselves.

### **5.3 Prizes and gifts**

On some occasions a council official may receive a ‘prize’ as a result of entering a competition while engaging in official duties. For example, an individual may win a raffle or lucky door prize drawn at a meeting or win a prize that was promoted as an incentive to complete a survey. Another example might be, those attending a specific session at a conference may enter a draw for a prize by submitting their business cards or signing up for further information about the product or service.

In such cases, since the official is representing Council, any prize should be treated as a gift or benefit and respectively declined and declared accordingly.

In exceptional circumstances where it is inappropriate to decline the prize, the determination by the General Manager (or Mayor if the prize winner is the General Manager) of the appropriate action that follows the declaration, is to consider case-by-case issues such as: the nature of the Council’s relationship with the prize giver; whether Council has business dealings with the organisation that provided the prize; whether Council has discretionary power that could be exercised in the prize giver’s favour; and whether accepting the prize may lead to perceptions of improper influence. A determination to accept a particular prize, should ordinarily include a stipulation that it becomes the property of the Council, not the individual. This approach better manages potential negative perceptions since the prize can ultimately be of benefit to the public.

### **5.4 Purchase incentive schemes**

Gifts and benefits may be obtained through a purchase incentive scheme. For example, a company may offer a free computer to clients after they have purchased a certain quantity of product. It is important to ensure that Council does not

compromise any duty of impartiality in order to obtain such bonuses. Nor should the bonus computer bring private benefit to any one individual in Council.

As with others, these gifts or benefits should be declared and acted on accordingly. In determining the appropriate action Council may still obtain the benefit while ensuring impartiality. For the above example, a determination may include the following actions:

- obtain a refund
- dispose of the computer at a public auction
- retain the computer but ensure it is only used for official purposes and its use is not restricted to the officer responsible for making the purchases.

Another example of a purchase incentive scheme is the accumulation of 'frequent flyer' points offered by airlines and other companies. Council officials are not to seek or accept frequent flyer points from airlines or other companies in respect of official transport or other products/services purchased, to ensure that choice of airline or other company is not influenced by the availability of frequent flyer points.

Council supplier discounts to Councillors, employees and other council officials for the personal purchase of goods and services from such suppliers must also be declined.

## **5.5 Hospitality and work-related functions**

In the course of their duties, council officials may attend work-related functions in a representative capacity. The appropriate response to the offer of hospitality in various situations is outlined below:

### ***External Meetings***

Often hospitality such as tea and coffee, or a modest luncheon will be offered during meetings, functions and similar events hosted by other organisations – these offers are normally considered a courtesy rather than a gift or benefit. Such refreshments are normally the 'standard' type of hospitality offered to business partners when conducting official duties for reasons of sustenance, and is acceptable hospitality.

### ***Conferences, seminars and launches***

It is appropriate to accept modest hospitality at industry conferences, seminars, product launches and the like, at which large numbers of people from other similar organisations are also attending, subject to attendance at the event having been previously approved. It is not appropriate to accept hospitality from such hosts / organisers in circumstances such as: where Council officials are the only invited guests, and/or where the event is held out of business hours.

Consideration must always be given to the potential public perception, and whether or not attendance at the event is relevant and of benefit to Council.

### ***Presentations***

Sometimes a council official may be invited to give a presentation to a conference / seminar or address a meeting of industry colleagues. Subject to the attendance at the event having been approved as an appropriate use of resources, it would be appropriate to accept modest hospitality and for Council to receive travel expenses to help cover the cost of attending.

In such cases, it is important that the request or offer is made to the Council and not the individual council official, and it is Council that decides which official should attend. This approach reduces the possibility of individuals being compromised by accepting hospitality.

### ***Disproportionate hospitality***

Hospitality that extends beyond courtesy, where there is no real benefit to Council as a whole, or is disproportionate to the occasion and clearly offered in an attempt to influence a council official's decisions, such as in relation to a procurement process or development approvals, are to be declined. Examples of such hospitality include invitations to participate in golf days, professional sporting events in a 'corporate box', and luncheons / dinners with developers outside of Council offices and/or outside of normal business hours.

## **5.6 Promotional material**

At some functions and events, other organisations (including potential suppliers) distribute promotional material, which may include factual product / service information and other items such as inexpensive pens and stationary. It would be appropriate to receive such promotional material on the basis that it is of benefit to Council to remain abreast of industry developments, and that the material is also being distributed to other individuals of similar organisations.

It would not be appropriate to also receive such items as:

- tickets to sporting events or other entertainment
- discounted products for personal use
- free / discounted passes for the use of leisure facilities
- vouchers and the like to purchase goods / services.

## **5.7 Providing services**

Some parts of Council provide services directly to the public. Such areas include, but not limited to the Library, Meals on Wheels and Customer Service. People who have received services from such areas may show their appreciation to council officials who have assisted them by giving gifts at the end of a year or at other times. In these circumstances, officials are to respectfully decline the gift and declare the offer.

In exceptional circumstances, if for some reason the gift cannot be returned, the appropriate determination may include the gift becoming the property of Council or disposed of in an appropriate manner (as described elsewhere), rather than being kept by the individual.

In declining these gifts of gratitude, officials may suggest to potential givers, that a letter of appreciation for exceptional service written to the official or Council would be more appropriate than a gift.

## **5.8 Procurement and disposal**

A contract to supply goods or the opportunity to buy Council assets can be highly profitable to the supplier or buyer. Suppliers and tenderers may attempt to influence procurement processes by offering gifts and benefits to the council official responsible for making the decisions. These risks can apply not only to staff

responsible for procurement and disposal but also to those who have contact with suppliers or buyers as part of their jobs.

An example of such a benefit would be a relationship between a council official and a council contractor, who is carrying out work on an official's property and offers a discount for the work due to this relationship. In order to manage the public perception of such situations, either the contractor and/or the official should declare the circumstance in accordance with this policy, whether a discount is being offered or not.

Ideally, the roles in client relationship and tendering functions within agencies should as far as possible be segregated. However, due to the size of Council, these responsibilities will often overlap. It is therefore important that council officials in a position to make procurement or disposal decisions need to exercise greater care when faced with offers of gifts and benefits from suppliers or buyers – all offers of such gifts and benefits are to be declined and declared.

## **5.9 Cultural considerations**

Council residents encompass a wide range of linguistic, religious and cultural backgrounds. Some individual residents and business people may be unfamiliar with acceptable gift-giving etiquette in the context of relationships with council officials.

The giving or exchange of gifts and hospitality plays an important role in business and professional life in many societies, and may be part of established business protocols elsewhere. For example, business and government delegations from a number of countries including Japan, Korea and China customarily offer gifts to council officials from other countries.

Conversely, in some situations gift-giving traditions may be abused and lead to widespread bribery of council officials. Culture or tradition (including religious festivals) is not to be used as an excuse to accept inappropriate gifts and benefits. Dealing appropriately with offers of gifts and benefits across cultures therefore requires special care.

In normal circumstances, all gifts and benefits to individual council officials should be respectfully declined and declared.

In exceptional circumstances, the General Manager (or Mayor) may endorse ceremonial gifts being received by Council from official delegations and the like (and similarly reciprocal giving of ceremonial gifts) and determine that such gifts be retained and/or disposed of in an appropriate manner as described elsewhere.

Refer also to 'Gifts associated with sister-city activities'.

## **5.10 Gifts associated with sister-city activities**

Sister-city gifts for the Council (normally presented to the Mayor or head of a sister-city delegation) are quite often non-token / ceremonial gifts such as a plaque, work of art or craft, or other items of significance that relate to a specific occasion. They may be of a reasonable monetary value and given with the intention to express welcome or gratitude to the receiving organisation as a whole, rather than to an individual.

All gifts associated with sister-city activities are to be declared and acted on accordingly. The determination by the General Manager (or Mayor if it is received by

the General Manager) will often include a stipulation that such gifts be displayed in an appropriate location within Council.

Sometimes, gifts may also be presented to individual council officials within Council's delegation. These gifts should be respectfully declined, unless the acceptance of such is otherwise determined because of exceptional circumstances.

### **5.11 Giving gifts to others**

There may be occasions when it is appropriate for Council to give gifts or benefits to individuals from other public or private agencies. For example, it may be appropriate for Council to offer a modest lunch to a delegation visiting its workplace as part of work-related activities, or to give a token of appreciation to an individual who has given a presentation to Council.

The same guidelines apply for the giving of gifts as for their acceptance, including taking into account how the offer of the gift may be perceived. Council should exercise particular caution when the proposed recipient or organisation has a continuing business relationship with Council.

### **5.12 Community organisations**

Council officials may, in the course of their duties, be offered benefits by a community based (not-for-profit) organisation expressing gratitude or respect for the civic office of the official. Such benefits may include invitations to events and functions of such organisations, including complimentary attendance at performances of local community musical / drama / cultural groups, local community sporting games, and the like.

In particular, Councillors, as elected representatives, may receive invitations from community organisations, which have an expectation that attendance is part of a councillor's role. Under normal circumstances it is appropriate for councillors to accept such invitations as a representative of Council, particularly where the occasion provides an opportunity for councillors to understand 'the interests of residents and ratepayers'.<sup>3</sup> It is recognised such events and functions may include incidental or modest hospitality.

It would be inappropriate for council officials, including councillors, to accept benefits:

- at a time when such community organisations are awaiting a Council decision on a grant application, seeking to commence/continue doing business with Council, seeking favourable use of Council facilities, and/or having other similar interactions with Council.
- where the hospitality is complimentary and disproportionate to the occasion.

In such circumstances, it would be appropriate to either respectfully decline the invitation, or seek endorsement to attend and pay for the 'ticket'. Council's Expenses and Facilities Policy outlines situations where Councillors can be reimbursed for the cost of attending certain non-Council functions.

In order to manage public perception, council officials are to be sensitive to the timing and the potential purpose of such benefits (including invitations) offered by community based (not-for-profit) organisations.

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<sup>3</sup> Refer 'What is the role of a councillor?' Section 232 *Local Government Act 1993*

All offers and invitations accepted without the purchase of a 'ticket' are to be declared.

### **5.13 Gifts that cannot be returned**

There may be exceptional circumstances where the acceptance of a gift that is unacceptable under Council's policy is inadvertently accepted by an employee or may not easily be returned. Examples include:

- a wrapped gift that the recipient does not open in the presence of the gift giver
- gifts accepted for cultural, protocol or other reasons, where returning it would be inappropriate
- anonymous gifts received through the mail or left for the official without a return address
- a gift received in a public forum where attempts to refuse or return it would cause significant embarrassment.

In such circumstances, the gift along with details of the incident are to be declared. The determination of the action to be taken will normally include a stipulation that the gift becomes the property of the Council rather than be kept by the council official.

## **6 Declarations by council officials**

The subsequent actions of all declared gifts and benefits are to be determined by the General Manager (or the Mayor, in the case of the potential recipient being the General Manager). Apart from the exceptional circumstance, where a gift or benefit is being retained, options for determinations are included in the section 'Disposal of gifts'.

The details of declarations of gifts and benefits that are to be entered in the Gifts and Benefits Register are outlined in the procedures.

The inclusion of an entry in the Gifts and Benefits Register does not relieve Councillors and designated persons from their obligations to make disclosures in association with Disclosure of Interest Returns (that is, annual pecuniary interest returns) required under Section 449(3) of the Local Government Act. It is also noted that the *Local Government (General) Regulation 2005* states:

*A gift need not be included in a return if:*

- it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less, or*
- it was a political contribution disclosed, or required to be disclosed, under Part 6 of the Election Funding and Disclosures Act 1981, or*
- the donor was a relative of the donee.*

## **7 Disposal of gifts**

When a gift is accepted for some exceptional reason, Council will 'dispose' of it in some way. The determination of the action to be taken may include one of the following disposal options:

- displaying the gift (particularly if it is a ceremonial gift)

- sharing the gift amongst staff or using it as a Council resource (for example a networked computer printer) – for the ultimate benefit of the public purse
- holding a fundraiser with the gift / benefit as the prize
- donating the gift / benefit to an appropriate charity
- holding an auction with the proceeds going to a charity.

## 8 Responsibilities

The General Manager is responsible for determining the actions to be taken in respect of each declaration of a gift and benefit that requires determination under this policy.

The Manager Governance and Business Services is responsible for:

- the implementation of this policy, including monitoring its effectiveness
- maintenance of the Gifts and Benefits register
- managing the determination of declarations of gifts and benefits.

Directors, Managers, Coordinators and others supervising staff are responsible to ensure that their staff are aware of this policy, its intent and the associated procedures, and to be available to give advice on its interpretation.

All council officials are to be aware of this policy and to be available for appropriate training.

## 9 Procedures

Procedures associated with this policy outline the following:

- What to do if offered a gift or benefit
- Details of responsibilities
- Declaration forms
- Details of Gifts & Benefits Register.

Procedures may change from time to time with the approval of the General Manager.

## 10 Further information

Further information may be obtained from:

- Council's Gifts and Benefits Procedures
- Manager Governance & Business Services
- ICAC web site [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

## 11 Document control

### 11.1 Review

Due to the nature of this policy and the possible implications that may flow from any gift or benefit received, it may be reviewed at any time. However, as a minimum, the policy will be reviewed within 12 months of an ordinary election of the Council. Apart

from inconsequential editing changes, amendments to this policy are to be submitted to Council for approval.

## 11.2 Related documents

This document should be read in conjunction with:

- *Local Government Act 1993*, in particular Part 2 Duties of disclosure, Section 449.
- *Local Government (General) Regulation 2005*, in particular: Part 8 Honesty and disclosure of interests, Clause 184 Gifts; and Schedule 3 Form of return - disclosure of interest.
- *Independent Commission Against Corruption Act 1988*
- *ICAC Managing Gifts & Benefits in the Public sector – Toolkit 2006*
- *Council's Code of Conduct*
- *Council's Conflict of Interest Policy*
- *Council's Public Interest Disclosures Policy*
- *Council's Expenses and Facilities Policy*

## 11.3 Version history

This policy was based on a former Rockdale City Council policy last adopted 7 December 2011 (effective from 1 April 2012).

Version	Release Date	Author	Reason for Change
1.0	07/12/2016	Bruce Cooke	Harmonised document from former Councils