

## COUNCIL POLICY

<b>Council Policy Title:</b>	<b>Gifts, Benefits and Hospitality</b>
<b>Council Policy ref. no:</b>	18.9
<b>Responsible Department:</b>	Corporate and Community Services
<b>Date of adoption/review:</b>	22 October 2014

### 1. BACKGROUND

Council's operations are founded on the ideals of transparency, impartiality, accessibility and equality. These ideals underpin Council's values, behaviours and service delivery. Councillors and staff must always act with the highest ethical standards and probity.

Individuals and companies who deal with Colac Otway Shire sometimes wish to express appreciation for service or assistance by the giving of some form of gift, benefit or hospitality to a Councillor or a member of staff. As a guiding principle, Councillors and staff should not accept a gift if it is likely to be perceived by a 'reasonable person' as intended to, or likely to, influence him or her in the fair, impartial and efficient discharge of their duties as a Councillor or staff.

The *Local Government Act 1989* (section 95) stipulates that Council staff in the course of their employment must act impartially; act with integrity including avoiding real or apparent conflicts of interest; and accept accountability for results.

It is also a primary principle of Councillor conduct (section 76B) for any Councillor in the performance of that role to act with integrity; to impartially exercise his or her responsibilities in the interests of the local community; and not improperly seek to confer an advantage (or disadvantage) on any person.

### 2. PURPOSE

The purpose of this policy is –

- to ensure that Council activities are conducted professionally and not influenced, or perceived to be influenced by the receipt or prospect of some form of gift, benefit or hospitality;
- to provide clear guidelines to ensure that Councillors, staff and Council contractors are not compromised in the performance of their duties by accepting gifts or benefits which may result in a sense of obligation or could be construed as an attempt to influence;

- to reinforce acceptable behaviour; and
- to provide a transparent and accountable process for accepting gifts that promotes public confidence.

### 3. DEFINITIONS

<b>Applicable Gift</b>	<p>An 'applicable gift' will be as defined in the <i>Local Government Act 1989</i> from time to time.</p> <p>At the date of adoption of this policy 'applicable gift' is defined in s78C (1) of the Act as:</p> <p><i>"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:</i></p> <p><i>(2) A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from -</i></p> <p><i>a. a person who has a direct interest in the matter; or</i></p> <p><i>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</i></p> <p><i>c. a person who gives the applicable gift to the person on behalf of a person, company or body that has direct interest in the matter.'</i></p> <p><i>(Threshold currently \$500)</i></p>
<b>Benefit</b>	<p>Something which is believed to be of value to the receiver, such as a service ie. access to a sporting event, preferential treatment, access to confidential information, accommodation, personal services, pleasure of vacation trips.</p>
<b>Bribe</b>	<p>dishonestly persuade (someone) to act in one's favour by a gift of money or other inducement:</p>
<b>Gift of Appreciation</b>	<p>Refers to a gift that is presented to an individual to express thanks and a feeling of goodwill on behalf of the giver where there is no expectation of repayment. These gifts are generally a one-off occurrence and are of nominal value.</p>
<b>Hospitality</b>	<p>Where a meal or service is offered which has a more than nominal value and is not viewed as being connected to official Council business or part of the accepted meal at a conference or seminar.</p>
<b>Monetary Gift</b>	<p>Defined as cash, cheques, money orders, travellers cheques and direct deposits.</p>

<b>Official Gift</b>	A gift received by Councillors or Council officers as representatives of the city or the Council. These gifts may be received from a Sister City, organisations or corporations that are bestowing a corporate gift (ie. plaques, plates, vases, trophies, artwork) or souvenir to the city or as a token of appreciation for a contribution to a conference or industry event.
Reasonable Hospitality (defined by section 78C of the Act)	Is hospitality received when attending a function or event in an official capacity ie. The hospitality is reasonable and not excessive and the Mayor, a Councillor, a member of Council staff is performing an official role at the function or event.
<b>Significant Occasion Gift</b>	A gift, which may be given by Council to the Mayor or a Councillor as a gesture of goodwill for official or ceremonial purposes.
<b>Token Gift</b>	Is between \$0 and \$30 in value and of such a nature and value that it could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to a matter. The gift also does not create a sense of obligation in the receiver that will influence, or appear to influence, the exercise of their official duties. In the event that a gift might reasonably be perceived to influence, or appear to influence, the recipient, it cannot be defined as a token gift.
<b>Value</b>	Value means the face value or estimated retail value.

### Examples of Various Gifts and Benefits

#### Token/acceptable gifts (usually a “once off”)

- Gifts of single bottles of reasonably priced alcohol to individual Council officials at end of year functions, public occasions or in recognition of work done (eg address at meeting).
- Free or subsidised meals, of a modest nature, and/or beverages provided to Council officials who formally represent Council at work related events.
- Souvenirs and mementos of a modest nature eg. ties, scarves, coasters, tie pins, pens, diaries, notepads, keyrings, chocolates, flowers and small amounts of beverages
- Invitations to appropriate out of hours “cocktail parties” or social functions organised by groups, such as community organisations or peer groups/associations.
- Gift vouchers up to \$30.00.
- Door prizes at conferences, tradeshows, etc.

### **Gifts of Value**

- Gifts and benefits that have more than a nominal or token value will include tickets to major sporting events, corporate hospitality at a corporate facility or at a sporting venue, discounted products for personal use, use of holiday homes, free or discounted travel, free training excursions, gift vouchers and major prizes at conferences and events.

### **Gestures which are not considered gifts**

- A token gift received from a person or company as a result of attending a seminar or conference held, conducted or sponsored by them, for which an appropriate fee was paid to attend.
- Non-alcoholic refreshments offered by a customer, consultant, contractor or developer whilst attending their place of business to discuss, conduct or undertake current Council business.

**Note** – if you are unsure of the value of a gift of gesture, seek advice/discuss it with your General Manager or the Organisational Support & Development unit.

## **4. POLICY**

The Colac Otway Shire is committed to being open and transparent in its operations. It will also act to minimise the risk of being placed in a compromising position that may have an adverse affect on its operations and the promotion of trust within the community.

Councillors and Council staff must:

- a) at all times be ethical, fair and honest in the conduct of official duties.
- b) never fraudulently receive a “Gift” or “Benefit” or “Hospitality”.
- c) ensure that the methods and processes they use to arrive at decisions are transparent and can withstand audit processes and proper scrutiny.
- d) not seek, solicit, or use their position with Council to obtain gifts or benefits from external organisations or individuals.
- e) ensure that a person, company or organisation is not placed in a position in which they feel obliged to offer gifts or hospitality to secure or retain Council business.

## **5. POLICY IMPLEMENTATION**

- 5.1 Councillors, Council employees and Council contractors are prohibited from seeking gifts, favours or hospitality, whether for their own benefit or the benefit of another Councillor, staff member, family member or client.
- 5.2 All reasonable steps must be taken to ensure that immediate family members of Councillors, staff and Council contractors do not receive gifts or benefits that could be perceived to be an attempt to influence the behaviour of the Councillor, staff member or contractor in question.
- 5.3 **A gift of cash cannot be accepted**, regardless of the amount and any offer of money must be reported to the Chief Executive Officer or the relevant General Manager.

## 6. GIFTS – PROCESS

6.1 Councillors and staff may accept gifts when:

- The gift would generally be regarded as only having a token value and could not be perceived to influence the Councillor's or employee's decision.
- Non acceptance of the gift may cause offence or embarrassment (ie. Overseas dignitary visits or gift is culturally sensitive) in which case the gift may be accepted on behalf of Council and becomes the property of Council.
- Receiving reasonable hospitality where:
  - There is clear value to the work of Council (for example, building relations with community groups).
  - It directly relates to their public duty as a Mayor or Councillor or employee
  - It does not advantage the gift giver in dealings with Council..

6.2 Any accepted gift must be disclosed, irrespective of whether it is a gift of value or a token gift.

6.3 All offers of a gift of value (being a gift valued at \$30.00 or more) must be disclosed, whether or not the gift is actually accepted.

6.4 Acceptance of a "once off" token gift (being a gift valued between 0 and \$30.00) shall be at the discretion of the Councillor, employee or Council contractor and does not require approval. However once two or more token gifts accepted by any one Councillor, employee or Council contractor from the same source (person or organisation) over a six month period collectively reach the value of \$500, any subsequent gift offer made to the same person by the same source in the ensuing six months, regardless of value, is to be treated as a gift of value and disclosed under this policy. The purpose of this provision is to ensure that undue influence is not exerted through the habitual giving and receiving of nominal or token gifts.

6.5 Acceptance of any gift of value (gift of \$30.00 or more) is subject to authorisation as follows:

- a gift offered to and/or taken by a member of staff must be approved by their General Manager.
- a gift offered to and/or taken by a Council contractor must be approved by the Council Contract Supervisor;
- a gift offered to and/or taken by a General Manager must be approved by the Chief Executive Officer;
- A gift offered to and/or taken by a Councillor is to be disclosed in writing to the Chief Executive Officer of the day;
- A gift offered to and/or taken by the Chief Executive Officer is to be approved by the Mayor of the day.

In the event that the designated officer considers either the gift and/or the circumstances in which it is given to be inappropriate, and for some reason the gift cannot be returned, the Chief Executive Officer must be informed.

The Chief Executive Officer will decide on whether to retain the item as corporate property or a suitable method for its disposal - the decision is to be recorded on the relevant Gift Disclosure form.

## 7. GIFTS THAT MUST NOT BE ACCEPTED

Councillors and staff must not accept a gift even if its acceptance is not prohibited under the Act:

- If the gift could be perceived as intended to, or likely to, influence him or her in the fair, impartial and efficient discharge of his/her duties as a Councillor.
- Where there is or may be the perception of a conflict of interest with past, present or future duties or where the object of the gift is to maintain or return a favour.
- Of cash or monies regardless of the amount (this does not apply to Election Campaign donations).

## 8. HOSPITALITY

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

Where such hospitality is only modest in nature and provides an opportunity to network or undertake business of a common purpose, it may be appropriate to accept such invitations.

Such incidental refreshments at meetings, working lunches or similar are not considered to be a gift and need not be recorded unless they occur at a frequency that gives rise to the perception of a conflict of interest under the *Local Government Act 1989*.

The Councillor or staff member should retain a record of all accepted invitations of hospitality that may be subject to audit.

Any hospitality estimated to be in excess of \$30 must be reported in the same manner as a Gift.

In situations where a Councillor accepts an invitation of hospitality, the Executive Assistance to Councillors will be responsible for reporting the details to the Organisational Support and Development Unit.

## 9. REPORTING AND RECORDING

All gifts and applicable gifts must be declared and details included on the Register of Gifts, Benefits and Hospitality which is administered by the Organisational Support and Development unit (OS&D). It is the responsibility of a Councillor or an employee wishing to declare a gift to complete the appropriate form (Appendix A) and forward it to O,S& D within seven (7) business days of being offered the gift or benefit including the following information:

- Description of the gift or benefit;
- Who the gift or benefit was received from;
- The approximate value; and
- How the gift was treated (eg handed to the CEO or retained for personal use).

Any acceptance of a gift or benefit (including those under section 6.1) must be disclosed. A gift or benefit declined must also be disclosed.

Disclosure that the gift has been declined and returned protects the Councillor or employee and highlights any systematic patterns.

Gifts declined in the presence of the gift giver do not need to be disclosed.

## **10. AWARENESS OF THIS POLICY**

All Councillors will be made aware of and are required to be familiar with their obligations under this policy.

All staff will be made aware of and are required to be familiar with their obligations under this policy.

## **11. COMPLIANCE**

Where a Councillor fails to comply with this policy, the issue shall be dealt with in the same manner as disputes arising under the Councillor Code of Conduct.

Where an employee fails to comply with this policy, the issue shall be dealt with in accordance with Council's Discipline Procedures.

## **12. RELATED LEGISLATION**

- Councillor Code of Conduct
- Council Policy 16.2 Fraud Prevention Control
- Staff Code of Conduct
- *Local Government Act 1989* – Sections 77, 78 and 95
- Conflict of Interest - A Guide for Councillors – October 2012

## **13. IMPLEMENTATION AND REVIEW**

This policy will be implemented by Council and is subject to periodic review.

## **14. ATTACHMENT**

Gifts, Benefits and Hospitality Declaration Form.

**ADOPTED/AMENDMENT OF POLICY**

<b>Reviewed Date</b>	<b>Reason for Amendment</b>
28 October 2009	Adopted by Council
24 July 2013	Review
22 October 2014	Review

**ATTACHMENT A**

**COLAC OTWAY SHIRE COUNCIL  
 GIFTS, BENEFITS AND HOSPITALITY DECLARATION FORM**

**Send completed form to Organisational Support and Development Unit for registration within seven (7) business days of the offer or the gift or benefit or prior to an offer of attendance at an event.**

Name of Recipient	
Position / Title	
Offered to or received by?	
Date of offer or date of receipt of gift/benefit	
Offer or gift was made by (name, position and organisation)	
Brief description of gift or benefit or hospitality	
Face Value, Estimated or Retail Value	\$

I have reviewed the Gifts, Benefits and Hospitality Policy and agree that the above action is in accordance with the policy. I understand that any action contrary to this policy may result in disciplinary proceedings in accordance with the Code of Conduct.

***Declaration made by:***

Name/Title	Signature	Date

***Gift Allocation – Manager/General Manager/Chief Executive Officer/Mayor (☑)***

<input type="checkbox"/> Gift to be retained and pooled for staff use	<input type="checkbox"/> Gift to be returned to donor
<input type="checkbox"/> Gift to be retained by individual	<input type="checkbox"/> Other (explain below)
Instructions/comment	

***Authorised by Manager/General Manager/Chief Executive Officer/Mayor***

Name/Title	Signature	Date

***Noted by Organisational Support and Development***

Name/Title	Signature	Date