



## Council Policy Gifts and Benefits

<b>Corporate Plan Reference:</b>	'Excellence as a Council'
<b>Endorsed by Council:</b>	16 February 2017
<b>Policy Author:</b>	Governance Advisor

### POLICY BACKGROUND

Councillors and Council employees hold positions of public trust and must carry out their duties impartially and with integrity. The provision of gifts and benefits to Councillors and employees can create perceptions of a conflict of interest and it is appropriate to question why they are offered and whether they should be accepted.

The *Public Sector Ethics Act 1994*, identifies the following four ethics principles as fundamental to good public administration:

- Integrity and impartiality;
- Promoting the public good;
- Commitment to the system of government; and
- Accountability and transparency.

This policy supports Noosa Council's commitment to the above principles, and the following local government principles<sup>1</sup>:

- Transparent and effective processes, and decision-making in the public interest;
- Good governance of, and by, local government; and
- Ethical and legal behaviour of Councillors and local government employees.

This policy aims to minimise the risk of Councillors and employees being exposed to an actual or perceived conflict of interest associated with benefits or gifts offered in the course of their official duties.

The requirements of this policy are in addition to the legislative obligations of Councillors and Senior Executives with respect to individual register of interests as prescribed in Part 5 of Chapter 8 of the *Local Government Regulation 2012* and the legislative obligations of Councillors prescribed by the *Local Government Electoral Act 2011*.

### COUNCIL POLICY

It is not appropriate for Councillors or employees to be offered or to accept gift or benefits that affect, may be likely to affect or could reasonably be perceived to affect, the independent and impartial performance of their official duties.

Councillors and employees must not ask for or encourage the giving of any form of gift or benefit in connection with the performance of official duties.

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<sup>1</sup> As provided under section 4 the *Local Government Act 2009*

### **Acceptance of gifts or benefits**

As a general guide, if a Councillor or employee is offered a gift, he/she should put themselves in the position of the person offering the gift and consider why the gift is being given and whether acceptance is appropriate.

Each type of gift or benefit carries with it different risks that should be considered when deciding whether or not acceptance is appropriate. It is important to consider the following:

1. Relevant legislation;
2. Why the offer of a gift or benefit was made;
3. The value and type of the gift/benefit (with higher value gifts/benefits warranting increased scrutiny); and
4. The likely public perception of acceptance.

### **Circumstances where the acceptance of a gift or benefit is not appropriate**

Pursuant to s199 of the *Local Government Act 2009*, a local government employee must not ask for, or accept, a fee or other benefit for doing something as a local government employee. However, this provision does not apply to a benefit of nominal value.

Councillors and employees must not accept a gift/benefit irrespective of its value, if any of the following apply:

- It is considered as a gift of influence – i.e. that it is seen, or may be seen, to affect the performance of the recipient's official duties, or otherwise influence, or be seen to influence, the decision-making or behaviour of the recipient;
- The donor or any reasonable observer would interpret that the recipient may be under an obligation to the donor as a result of receiving the gift;
- It is not offered openly; or
- It is an offer of money.

Any gifts or benefits offered in the above circumstances must be reported immediately:

- To the relevant Director/Manager or CEO (for employees);
- To the Mayor (for Councillors and CEO).

If unsure, Councillors and employees should decline offers of gifts or benefits courteously by explaining that acceptance would be against Council policy.

### **Circumstances where it may be appropriate to accept a gift**

Acceptance of a gift or benefit may be considered appropriate if it complies with the following principles:

- It does not influence, or have the potential or perceived potential to influence, in any way so as to compromise, or appear to compromise, the integrity and impartiality of the recipient, or to create a conflict of interest, or perception of a conflict of interest.
- It is not related to advice or decisions about (but not limited to):
  - Granting licences;
  - Inspecting and regulating businesses;
  - Granting of approvals;
  - Letting of contracts;
  - The provision of Council services;
  - The provision of a Council grant.

The following gifts are considered low risk and can generally be accepted:

- Gifts of nominal value made in gratitude for specific tasks or performance e.g. a small personal gift to an employee or Councillor for speaking at an official function;
- Low value corporate gifts made as a marketing/sponsor initiative e.g. mass produced mementoes at a professional development conference;
- Ceremonial/symbolic gifts from visiting organisations provided to Council as an organisation (as opposed to an individual employee or Councillor) to be retained by the organisation e.g. plaque of appreciation or memento from place of origin.

Appropriate gifts offered to employees can only be accepted and utilised by the individual recipient if it is not contrary to the public interest and further, if it is approved by the employee's relevant Director/Manager or the CEO. Other available options for recipients to consider include surrendering the gift for disposal (donation to a charity) or for the use of the wider organisation.

Gifts made to the organisation remain the property of the organisation and not individual Councillors or employees.

## **DECLARING AND REPORTING OF GIFTS AND BENEFITS ON COUNCIL'S GIFT REGISTER**

### **Gifts and Benefits Register**

Council's Gift and Benefits Register is centrally maintained by Council's Governance Team. The Register will record the following details of all reportable gifts and benefits under this Policy:

- The date the gift was offered;
- The date the notification was made;
- The recipient and donor;
- Estimated fair market value;
- Determination on how the gift was dealt with - e.g. disposal by donation to charity, use by the organisation, retention of the gift for personal use by the individual recipient, or non-acceptance, and who authorised that decision.

### **Recording threshold for employees and the organisation**

Any appropriate gift or benefit received by employees or the organisation that has an estimated value of \$100 or more must be recorded on Council's Gifts and Benefits Register via the Governance Team within 30 days of acceptance.

In addition to the above, the CEO and Senior Executive Employees have obligations to disclose gifts received exceeding \$500 on their Register of Interests under Part 5, Chapter 8 of the *Local Government Regulation 2012*.

### **Recording threshold for Councillors**

Any gift received by a Councillor that is required to be recorded on a Councillor's individual Register of Interests pursuant to section 291 of the *Local Government Regulation 2012* (gifts totalling more than \$500), must also be noted on Council's Gifts and Benefits Register. Upon updating their Register of Interests, Councillors are requested to notify the Governance Team so that the Council's Gifts and Benefits Register can be updated.

### **Multiple gifts and cumulative value**

If multiple gifts are accepted from the same provider or on behalf of the same organisation and the cumulative value is more than \$100 (for employees) or \$500 (for Councillors), then each gift or benefit must be reported on the register once the relevant threshold is reached or is considered likely to be reached in the future.

### **Recording of gifts received below the value thresholds and gifts not accepted**

Whilst not required under this Policy, a Councillor or employee may record the acceptance of a gift or benefit estimated below the aforementioned value recording thresholds on Council's Gifts and Benefits Register should they wish to do so, or if instructed by the CEO or relevant Director/Manager.

Offers of gifts or benefits that are not accepted may also be entered on the register for transparency and recording keeping purposes.

### **DEFINITIONS**

**Conflict of Interest** occurs when a Councillor or employee's private interests interfere, or appear to interfere, with the duty to act impartially and in the public interest.

**Actual conflict of interest** involves a direct conflict between a Councillor or employee current duties and responsibilities and their existing private interests.

**Perceived (or apparent) conflict of interests** occurs where it could be perceived by others that a public official's private interests could improperly influence the performance of their public duties – whether or not this is in fact the case.

**Donor** refers to the person or organisation making the offer of a gift/benefit to Council, a Councillor or Council Employee.

**Gifts and benefits** refer to items given and received in the course of official duties and include tangible (of lasting value) and intangible (of no lasting value) items. The *Local Government Regulation 2012* defines a gift as:

- (a) The transfer of money, other property or other benefit –
  - (i) Without consideration; or
  - (ii) For a consideration substantially less than full consideration; or
- (b) A loan of money or other property made on a permanent or indefinite basis.

Examples of a gift include – a gift voucher, entertainment, hospitality (such as meals), travel, goods, event tickets, lucky door prizes at events paid for by Council, and prizes/awards received in connection with Council duties.

Examples of a benefit include – a non tangible item of value such as new job of promotion, preferential treatment or access to confidential information.

**Nominal** value for the purpose of this policy is considered to be anything up to \$100.

**Public perception** means the perception of a fair-minded person in possession of the relevant facts.

**Recipient** means the Councillor or Employee who has been offered the gift/benefit.

**Value** refers to the estimated reasonable retail value of a gift/benefit.

## RELEVANT LEGISLATION AND POLICIES

*Local Government Act 2009*

*Local Government Regulation 2012*

*Public Sector Ethics Act 1994*

*Crime and Corruption Act 2001*

Councillors Code of Conduct

Employee Code of Conduct

Fraud and Corruption Prevention Policy

### Version control:

Version	Reason/ Trigger	Change (Y/N)	Endorsed/ Reviewed by	Date
1.0	New Policy		Council	16/02/2017
	Eg. Review			