



Councillors Gifts & Benefits Policy

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Version:	5.0
Responsible Officer:	Director Governance, Recreation & Property Services
Strategic Plan Reference:	2.4 The organisation has a corporate culture that delivers quality customer service, encourages innovation and has high standards of accountability.

1. POLICY STATEMENTS

- 1.1 The Gifts and Benefits Policy is to provide guidance to Councillors regarding the issue of being offered or receiving gifts or benefits to support compliance with the requirements of both the *Local Government (General) Regulations 2015* and the relevant provisions in Council's Model Code of Conduct.
- 1.2 The Policy also ensures that in dealing with any gifts, benefits or the offer of gifts or benefits that Councillors are not influenced in the performance of their duties and that there is no perception of undue influence due to these offers.

2. DEFINITIONS

- 2.1 **"Councillors"** means a person elected to Council and includes the Mayor and Deputy Mayor.
- 2.2 **"Gift"** as defined in the regulations is "an item, service, loan of money, loan of property or any other benefit with a monetary value".
- 2.3 **"Aggregated gift or benefit"**, in alignment with the regulations, means an item, service or other benefit that is part of a series of gifts or donations received by a councillor from the same donor.
- 2.4 **"Gift of influence"** means a gift that is intended to generally ingratiate the giver with the recipient for favourable treatment in the future.
- 2.5 **"Gift of gratitude"** means 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.
- 2.6 **"Benefit"** means 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).
- 2.7 **"Hospitality"** means the provision of accommodation, meals, refreshments or other forms of entertainment.
- 2.8 **"Bribe"** means 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.
- 2.9 **"Cash"** means money or vouchers which are readily convertible.
- 2.10 **"Nominal value"** means 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 in excess of \$50.00.
- 2.11 **"Significant value"** means a gift or benefit that has a value above the nominal value limit.
- 2.12 **"Token"** means a value under the nominal value limit.
- 2.13 **"Non-token"** means 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.
- 2.14 **"Conflict of interest"** means 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.
- 2.15 **"Public perception"** means the perception of a fair-minded person in possession of the facts.
- 2.16 **"Gifts and Benefits Declaration Form"** means a form to be completed (example template at attachment A), 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 (Aggregated Gift or Benefit).

3. OBJECTIVE

- 3.1 The Policy provides a clear understanding of Councillors' responsibilities in relation to receiving or being offered gifts or benefits to ensure that the integrity of individual Councillors and Council as a corporation is protected as well as compliance with Council's Code of Conduct and the *Local Government (General) Regulations 2015*.

4. SCOPE

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

5. PROCEDURE (POLICY DETAIL)

5.1 General

- 5.1.1 Councillors at all times and in all circumstances must be seen to be fair, impartial and unbiased.
- 5.1.2 Council's Code of Conduct "Gifts and Benefits" outlines the provisions in relation to Councillors being offered a gift or benefit.
- 5.1.3 The Code of Conduct states: "A councillor adheres to the highest standards of transparency and accountability in relation to the receiving of gifts or benefits and carries out their duties without being influenced by personal gifts or benefits".
- 5.1.4 A breach of the clauses within the Code of Conduct will be treated as a breach of the Code of Conduct.
- 5.1.5 Councillors should actively discourage offers of gifts and benefits and must not solicit gifts or benefits.
- 5.1.6 Councillors must not take advantage of their official position to secure an unreasonable personal profit or advantage.
- 5.1.7 People doing business with the Council should be encouraged to understand that they do not need to give gifts or benefits to Councillors to get high quality service.
- 5.1.8 From time-to-time Councillors 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.
- 5.1.9 Councillors should at all times be aware of the wider situation in which an offer of a gift or benefit is being made. For example, Councillors 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 Council's functions.
- 5.1.10 Councillors 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.
- 5.1.11 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.

5.2 Acceptable gifts and benefits

- 5.2.1 Token gifts may be accepted by Councillors without disclosing details to the Chief Executive Officer or Mayor and without recording the details of the gift or benefit on the *Gifts and Benefits Declaration Form* or *Gifts Register* (attachments A and B).

- 5.2.2 That said, Councillors 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. The period is specified in 5.11.
- 5.2.3 If a Councillor has any doubt if a gift or benefit is token or of nominal value they should discuss it with the Chief Executive Officer or Mayor.
- 5.3 **Gifts and Benefits which are not acceptable**
 - 5.3.1 Accepting gifts of cash, cash-like gifts (such as gift cards and vouchers) or credit is prohibited.
 - 5.3.2 Councillors should generally not accept gifts or benefits that appear to be non-token in nature or more than of a nominal value.
 - 5.3.3 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* (at attachment A) and the details must be recorded on the *Council Gift Register* (at attachment B).
 - 5.3.4 If a Councillor 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 the Chief Executive Officer or Mayor.
- 5.4 **Non-token gifts and benefits between authorities**
 - 5.4.1 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.
- 5.5 **Actual or perceived effect of the gift or benefit**
 - 5.5.1 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).
 - 5.5.2 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 Chief Executive Officer or Mayor.
- 5.6 **Bribes**
 - 5.6.1 Councillors must not offer or seek a bribe. A person offered a bribe should refuse it and report the incident as soon as possible to the Chief Executive Officer or the Mayor. Council will take steps to report the matter to Police immediately.
 - 5.6.2 Receiving a bribe is an offence under both the common law and Tasmanian Legislation.
- 5.7 **Family members**
 - 5.7.1 Councillors 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.
- 5.8 **Records – Gifts and Benefits Registers**
 - 5.8.1 Councillors who receive more than the specified number of token gifts or benefits from the same person or organisation (Aggregated Gift or Benefit), must disclose that fact on the *Gifts and Benefits Declaration Form* and the *Gifts and Benefits Register*. The specified number is included in 5.11.

5.8.2 Councillors who receive more than the prescribed value through aggregated gifts and benefits over a financial year, must disclose that fact on the *Gifts and Benefits Declaration Form* and the *Gifts and Benefits Register*. The specified value is included in 5.11.

5.8.3 If a Councillor receives a non-token gift or benefit in circumstances where it cannot reasonably be refused or returned, the receipt of the gift or benefit should be disclosed and the details recorded on a *Gifts and Benefits Declaration Form* and in the *Gifts and Benefits Register*.

5.9 Disposal of gifts

5.9.1 The Chief Executive Officer or Mayor will determine whether a gift or benefit of a non-token nature should be disposed.

5.9.2 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.

5.9.3 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.

5.10 Breaches of Model Code of Conduct

5.10.1 All Councillors are obliged to comply with the Code of Conduct and sanctions may be applied if the policy is breached.

5.10.2 Any person may lodge a complaint in accordance with the Code of Conduct for an alleged breach of the Code of Conduct to the Chief Executive Officer.

5.11 Detail of amounts and frequencies specified in the policy

5.11.1 For the purpose of this policy the value limit, for single and aggregate gifts and benefits, is as prescribed in the *Local Government (General) Regulations 2015*. At the time of the writing policy this is \$50.00.

5.11.2 The aggregate gift and benefit value limit for a financial year is as prescribed in the *Local Government (General) Regulations 2015*. At the time of the writing policy this is \$50.00.

5.11.3 Councillors who receive more than (three) nominal gifts of a token nature from the same person or organisation, in a six-month period must disclose that fact in the gifts and benefits register.

5.12 Gifts and Benefits Register

5.12.1 The Chief Executive Officer will establish a *Councillors' Gifts and Benefits Register*. All offers of gifts and benefits that are reported or declared are to be recorded in the *Register*.

5.12.2 The *Councillors' Gifts and Benefits Register* must include:

- The date on which the gift or donation was received (or offered).
- The name of the intended recipient.
- The name of the person/organisation who offered the gift (the donor).
- The councillor's relationship to the donor.
- The suburb or locality where the donor resides (if known).
- The nature of the gift.
- The estimated monetary value of the gift.
- Other relevant details (including details of refusal or return of gift or benefit).

5.12.3 The Chief Executive Officer will review the *Gifts and Benefits Register* every three months to ensure compliance with this Policy and will liaise with the Mayor on the issue.

5.12.4 In auditing the register, the Chief Executive Officer will review the submissions of the previous six months and record on the register that they have done so. This will be dated and signed. Any comments or observations made by the Chief Executive Officer should also be recorded on the register in the space available.

5.12.5 The Register will be updated at least monthly and made available for public inspection at the Council Offices at 15 Channel Highway, Kingston and on Council's website.

6. GUIDELINES

6.1 Nil.

7. COMMUNICATION

7.1 Kingborough Councillors are informed of this Policy.

7.2 A copy of this Policy is available from the Civic Centre or can be accessed on Council's website.

8. LEGISLATION

8.1 *Local Government Act 1993* (the Act)

8.1.1 Section 56A of the Act requires councillors who receive gifts or donations as prescribed in regulations to notify the Chief Executive Officer in writing, with prescribed details, within a prescribed period.

8.1.2 Section 339A of the *Local Government Act 1993* specifies penalties in relation to misuse of office by Councillors and employees.

8.2 *Local Government (General Regulations) 2015* (the Regulations)

8.2.1 Section 29A of the Local Government (General Regulations) 2015 prescribes the following classes of gift or donation:

(a) an item, service, loan of money, loan of property or any other benefit with a monetary value of \$50 or more;

(b) an item, service or other benefit that is part of a series of gifts or donations received by a councillor from the same donor, where the aggregate monetary value of the series of gifts or donations in a financial year is \$50 or more.

8.2.2 Section 29B of the Regulations outlines what must be contained in a notice to the Chief Executive Officer. That being:

- (a) the name of the councillor who received the gift or donation;
- (b) a description of the gift or donation;
- (c) the name of the donor, if known;
- (d) the councillor's relationship to the donor, if known;
- (e) the suburb or locality where the donor resides, if known;
- (f) the date on which the gift or donation was received;
- (g) the estimated monetary value of the gift or donation.

8.2.3 Section 29C of the Regulations prescribes the timeframe for reporting gifts and donations. These are within 14 days of receiving a gift or donation; or if the gift or donation is received outside of Australia, within 14 days for returning to Australia.

8.2.4 Information to be included in the Councillor Gifts and Benefits Register is prescribed in section 29D of the Regulations:

- (a) the name of the donor of the gift or donation, if known;
- (b) the councillor's relationship to the donor, if known;
- (c) the suburb or locality where the donor resides, if known;
- (d) the date on which the gift or donation was received;
- (e) the estimated monetary value of the gift or donation.

8.3 *Criminal Code Act 1924*

8.3.1 Section 83 of the *Criminal Code Act 1924* provides for criminal action to be taken against public officers who corruptly solicit, receive, obtain (or agree to) any property or benefit of any kind for themselves or other people on account of anything done or omitted in the discharge of their duties.

8.3.2 Councillors are considered 'public officers' under the *Criminal Code Act 1924* which has provision for the imposition of severe penalties, including imprisonment.

9. RELATED DOCUMENTS

9.1 Council's Code of Conduct.

9.2 Part 6 states:

9.2.1 A councillor may accept an offer of a gift or benefit if it directly relates to the carrying out of the councillor's public duties and is appropriate in the circumstances and is not in contravention of any relevant legislation.

9.2.2 A councillor must avoid situations in which a reasonable person would consider that any person or body, through the provisions of gifts or benefits of any kind, is securing (or attempting to secure) influence or a favour from the councillor or the Council.

10. AUDIENCE

10.1 Kingborough Councillors.

10.2 Public.

Attachment A

GIFTS AND BENEFITS DECLARATION FORM

Councillor's Name	
Date gift offered/received	
Description of the gift	
What is the approximate dollar value of the gift?	
Name of individual or organisation providing the gift	
Where was the gift offered? <i>(ie. at a function, through the mail, at a meeting etc)</i>	
Recipient's relationship to the donor <i>(if known)</i>	
Suburb/Locality where Donor Resides <i>(if known)</i>	
Was the gift or benefit accepted or declined?	
Councillor's signature	
Date	

CEO's comments			
Should the gift be retained? If not, disposal method			
CEO's Name	Dave Stewart	Signature :	
Date			

Attachment B

Councillors Gifts & Benefits Register

DATE RECEIVED	NAME OF RECIPIENT	POSITION OF RECIPIENT	NAME OF DONOR	COUNCILLOR'S RELATIONSHIP TO DONOR (if known)	SUBURB/LOCALITY WHERE DONOR RESIDES (if known)	DESCRIPTION OF GIFT/BENEFIT	ESTIMATED VALUE (\$)

I confirm that I have reviewed the submissions and make no comments or observations.

Dave Stewart
Chief Executive Officer
being the General Manager as
appointed by the Kingborough
Council pursuant to section 61 of
the *Local Government Act 1993*
(TAS)

Date