

Gift, Benefits and Hospitality Policy

Department/Unit: <i>Governance & Risk</i>	First Implemented: 2015 Reviewed: 2017 Effective From: <i>Immediate</i> Review Date: <i>April 2025</i> Version: 3 Trim Reference: <i>E513/2</i>	Origin Responsible Officer <i>Coordinator Governance & Risk</i> Endorsed by Council: 20 April 2021
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1. PURPOSE/OBJECTIVE

This policy outlines Mansfield Shire Council’s position on elected Councillors and appointed Council Officers responding to offers of gifts, benefits and hospitality.

Its aims are to:

- protect individuals from unknowingly having a conflict of interest in line with the requirements of the *Local Government Act 2020* (the Act); and
- ensures that all gifts are appropriately recorded and disclosed; and
- ensures Councillors, staff and contractors follow sound and transparent business practices that can withstand any public scrutiny around the acceptance of gifts and hospitality.

As a guiding principle, Councillors or staff should not accept gifts. A gift or hospitality can be perceived 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 member.

2. SCOPE

This policy applies to all Councillors, staff, contractors or volunteers in relation to any gifts, benefits or hospitality offered to or received by Councillors or Council staff from external parties.

3. DEFINITIONS

- Act** *Local Government Act 2020*
- Benefit** Is something which is believed to be of value to the receiver, such as access to a sporting event, preferential treatment, access to confidential information, accommodation, personal services, and pleasure/vacation trips.
- CEO** Chief Executive Officer



Conflict of Interest A conflict of interest means a general conflict of interest within the meaning of section 127 of the LGA and a material conflict of interest within the meaning of section 128 of the Act.

A general conflict of interest is where an impartial, fair-minded person would consider that a person's private interests could result in that person acting in a manner that is contrary to their public duty.

A material conflict of interest is where an affected person would gain a benefit or suffer a loss depending on the outcome of the matter. The benefit may arise or the loss incurred either directly or indirectly and in a pecuniary or non-pecuniary form. A relevant person means a person who is a Councillor, member of a delegated committee or a member of Council staff.

Disclosable Gift A Disclosable Gift has the meaning given to it in section 128(3)(h) of the Act and includes one or more gifts with a total value of, or more than, \$500 that was received from a person in the 5 years preceding the decision on the matter:

(a) if the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received; or

(b) if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation—
but does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a delegated committee.

To accord with the Act on public transparency, Mansfield Shire Council's policy is that ALL gifts, or offers whether accepted or not, are disclosable.

Gift Any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including—

- a) the provision of a service (other than volunteer labour); and
- b) the payment of an amount in respect of a guarantee; and
- c) the making of a payment or contribution at a fundraising function.

Gift disclosure threshold in the case of a Council, other than the Melbourne City Council, \$500 or a higher amount or value prescribed by the regulations

Nominal Value Is an item with a face or estimated value of less than \$30



4. POLICY STATEMENT

This policy has been developed to ensure transparency and the principles of good governance and accountability are practised by Councillors and staff when receiving gifts and hospitality in the course of their duties.

Mansfield Shire Council acknowledges that as part of business or cultural practices, at times Councillors and/or council staff will be presented a gift in appreciation. While the Council is appreciative of such acts of generosity it is Council policy that gifts should not be accepted and be politely refused.

This policy confirms that all gifts and hospitality (as defined in this policy), whether accepted or declined, should be recorded in Council's Gift Register.

4.1 Gifts must never be sought

Councillors and Council staff should not solicit, demand or request gifts or any personal benefit by virtue of their position which could prejudicially influence, or be perceived to influence, a person in the performance of his or her public or professional duties. To avoid a conflict of interest, acceptance of any gifts or benefits or hospitality in these situations must be declined.

4.2 Gifts never to be accepted

The following gifts or benefits are considered totally inappropriate and must not be accepted:

- Money, regardless of the amount.
- Access to confidential information.
- Promise of a new job.
- Preferential treatment (may include reciprocal favours given in return for a service provided by Council).

4.3 Gifts or Benefits

Gifts or benefits are offered in the course of a business relationship to express gratitude for assisting with a matter however the general purpose may be to create a feeling of obligation in the recipient.

As Councillors or staff members, at some stage in your term of office or employment, you may be offered a gift or benefit. The gift or benefit could be offered innocently in good faith or could be an attempt to influence. Feelings of obligation can arise if Councillors or staff members accept a gift or benefit. Once it has been accepted, your position as Councillor or staff member may be compromised as often persons attempting to corrupt Councillors or staff members start with small inducements that appear to have no improper motive behind them.

While a Councillor or staff member may accept gifts or benefits of a nominal or token value that do not create a sense of obligation on their part, as a general rule Councillors or staff members should not accept gifts, benefits or hospitality. By politely refusing such gifts,



benefits or hospitality, Councillors or staff members can avoid feeling compromised and contributing to a public perception of bias either at the time or in future dealings.

Before accepting any gift, benefit or hospitality you must consider the ramifications/perceptions of such offer and ask yourself whether a conflict of interest may arise. Clarification of what may constitute a Conflict of Interest can be sought from referring to this policy, talking to the Coordinator Governance & Risk or to your respective General Manager.

While a single gift or benefit may be of modest value, when viewed in total, the value of the hospitality or gifts may be substantial. Councillors and staff members have a legal obligation to aggregate the value of even token gifts or hospitality over the past five years and if the hospitality exceeds the threshold of \$500 in that period it can give rise to a material conflict of interest.

Councillors must dispose of any anonymous gifts within 30 days of the gift being received in line with the requirement in section 137(2) of the Act and with their Councillor Code of Conduct.

4.3.1 Token or Nominal Gifts

Given their token nature and small monetary value such gifts are appropriate to accept, notwithstanding the requirements of the Act, particularly if the gift is offered in an open or public forum, refusal of the gift would be impolite.

Generally speaking nominal gifts and moderate acts of hospitality could include:

- Gifts of a nominal value (\$30 or less) that are infrequently offered.
- Gifts of single bottles of reasonably priced alcohol as acknowledgement for giving a presentation or being the guest speaker.
- Free meals of a modest nature and/or beverages provided to Councillor/s or staff members who are formally representing the Council at a work related event such as training, workshops, or seminars.
- Refreshments of a modest nature provided at a conference where a Councillor or staff member is the guest speaker.
- Marketing or corporate mementos such as ties, scarves, pens, coasters, tie pins, diaries or chocolates.
- Flowers and small amounts of beverages.
- Invitations to out of hours functions or social events organised by groups such as Council committees and community organisations.

If a Councillor or Council staff member receives a token or nominal gifts worth less than \$30 value, they must:

1. complete the Gifts, Benefits and Hospitality Form (available on the Intranet/Councillor Portal);
2. have the form signed off by their supervisor/manager (Council staff); and
3. provide the form to the Coordinator Governance & Risk to record on the Gifts Register.



Note: When the accumulation of token gifts from a single source exceeds \$30 in a 12 month period, this must be reported to the CEO, via the Coordinator Governance & Risk to be recorded on the Gifts Register.

4.3.2 Gifts valued over \$30

These gifts should not be accepted unless refusal would be impolite or otherwise impractical – in this situation, the gift may be accepted on behalf of Council as a corporate gift. All offers, whether accepted or refused by Councillors or Council staff:

1. need to be recorded on a Gifts, Benefits and Hospitality Form (available on the Intranet/Councillor Portal);
2. the form needs to be signed off by supervisor/manager (Council staff);
3. provide the form to the Coordinator Governance & Risk, who will arrange for CEO sign off and record the details on the Gifts Register.

4.4 Hospitality

Hospitality is often offered in the course of business to demonstrate a good working relationship. Where hospitality is less than nominal value and provides an opportunity to network or undertake business of a common purpose, it may be appropriate to accept such invitations.

Hospitality is not considered a gift if the following conditions are met:

- Where attending a function in an official capacity
- The hospitality is reasonable. For most this is sandwiches and tea/coffee.

Hospitality **IS** considered to be a gift where a Councillor, staff member or contractor attends an event or function:

- using free tickets received and has NO official duties to perform;
- where free membership is offered;
- where the hospitality is generous and exceeds \$30 in value.

Any hospitality in excess of \$30 must be recorded in the Gifts Register within five business days of their acceptance.

4.5 Official gifts

This is a gift presented to the Shire or the Council and include gifts received from a Sister/Friendship City, organisations or corporations that are bestowing a corporate gift (plaques, plates, vases, trophies and artwork) or souvenirs.

Individuals may be involved in social, cultural or community events where official gifts are presented or exchanged. Where it would appear impolite or inappropriate to decline the offer, it is reasonable for official representatives of Council to accept official gifts on behalf of the Council. A letter of thanks will be prepared and sent by Council staff acknowledging the gift to Council and not the individual Councillor.



All official gifts received are to be reported to the CEO and recorded in the Gift Register within five business days of receipt. The gift will be considered the property of Council, and where suitable, the gift will be displayed in an appropriate and secure location for public viewing.

4.6 Christmas

Christmas is a time when Councillors, Staff and Contractors are often offered gifts and invitations to functions. Annual notification to all staff and Councillors of their obligations in respect to the receipt of gifts and invitations will be sent out by the CEO's office in late November.

4.7 EOIs/Tender Documentation

Expression of Interest (EOIs) and tender documentation (specifications and contracts) must state that *"No offers of gifts, of whatever value, must be made to Councillors or staff and that any such offer in the process will automatically exclude that participant in the tender process"*.

4.8 Gifts Register

All offers of gifts and acts of hospitality must be declared. A Gifts Register is maintained by the Coordinator Governance & Risk.

The Gifts Register will be made available for public inspection and contain the following information:

- Date
- Description of the Gift, Benefit or Hospitality
- Estimated Value
- Recipient
- Donor/Provider Details
- Treatment (ie, was it personally accepted, placed on display, or retained by Council to be pooled for staff use.)

4.9 Annual Reporting

The Coordinator Governance & Risk will be responsible for maintaining the details in the Gifts Register and providing an annual report to the Audit and Risk Committee and the Executive Management Team within three months of the end of the calendar year.



4.9 Quick Reference Guide to Gift, Benefits & Hospitality Procedure:

Type of Gift	OK to accept?	Complete Form	Form to Manager*	CEO Sign off required**	Recorded on Gifts Register by Governance
Gift from a supplier to Council or a potential supplier to Council	No	Yes	Yes	Yes	Yes
Token gift (value less than \$30)	Yes, if conditions in policy are met	Yes	Yes	No	Yes
Accumulated token gifts (total value > \$30 in 12mth period)	Yes, if conditions in policy are met	Yes	Yes	Yes	Yes
Gift (anything other than token gift)	No, unless conditions in policy are met	Yes	Yes	Yes	Yes
Hospitality as part of normal Council duties	Yes, if reasonable hospitality	No	No	No	No
Hospitality not linked to normal Council duty, or beyond what is reasonable	No	Yes	No	Yes	Yes

* Staff forms are to be signed off by supervisor/manager prior to sending to Coordinator Governance & Risk. Councillor forms to be provided directly to Coordinator Governance & Risk

**CEO forms to be signed off by the Coordinator Governance & Risk.



5. RESPONSIBILITIES

All Mansfield Shire Council employees, Councillors and contractors are responsible for adhering to and implementing this policy.

Council staff or Councillors must immediately report to the CEO any attempt to bribe them or their colleagues with money or other benefits and are encouraged to report any colleague who tries to solicit a bribe.

The Governance Unit is the owner of this policy. Any reviews of this Policy must be made in consultation with the Coordinator Governance & Risk.

Overall responsibility for the application of this Policy is held by the CEO.

5.1 Legal Obligations

Councillors and staff members must familiarise themselves with their obligations under the Act in respect to gifts, particularly the following clauses:

Councillors

Section 123 - misuse of position

Section 125 - dealing with Confidential Information

Sections 126, 127, 128, 129, 130 and 131 –Conflict of interests

(note landmark case: Winky Pop Pty Ltd v Hobsons Bay City Council [2007] VSC 468

Sections 132, 133, 134, 135 and 136 – Personal Interests Return

Section 137 – Anonymous gifts not be accepted

Section 300 – bribery, treating and undue influence in respect to Council elections

Sections 306 and 309– election campaign donations

Section 319 – persons who are liable for offences for breaches of the LGA.

Officers/Contractors

Section 130 – staff to disclose any conflict of interest in respect of a number of matters, including matters under consideration at meetings, matters that arise in the course of the exercise of a power of delegation by a member of Council staff or arises in the course of a statutory function under the Act.

Sections 132, 133, 134, 135 and 136 – Personal Interests Return

Section 319 – persons who are liable for offences for breaches of the Act.

6. REFERENCES / RELATED POLICIES

Mansfield Shire Fraud Prevention Policy

Mansfield Shire Council Employee Code of Conduct

Mansfield Shire Council Councillors Code of Conduct

Mansfield Shire Procurement Policy

Local Government Act 2020



7. IMPLEMENTATION

This Policy is effective from 20 April 2021.

8. REVIEW DATE

This Policy is to be reviewed by April 2025.

9. AUTHORISATION TO IMPLEMENT POLICY

Signed: 
Councillor

Witnessed: 
Chief Executive Officer

Approval dated: 20 April 2021

Mansfield Shire Council reserves the right to review, vary or revoke this Policy at any time.



GIFT, BENEFITS AND HOSPITALITY FORM

Completed form to be forwarded to the Coordinator Governance & Risk

Details – Recipient to complete			
Name of Recipient			
Position Title			
Name of Donor			
Donor Address (Agency/Organisation)			
Relationship of Donor to recipient			
Description of gift, benefit or hospitality			
Reason for gift, benefit or hospitality			
Estimated Value	\$	Date Received	
Donor Acknowledged?	Yes <input type="checkbox"/> No <input type="checkbox"/>		
<i>To my knowledge the donor is not currently subject to any tender, permit application processes or matters under consideration, for which this gift may be perceived as exercising a beneficial interest over any Councillor or staff member, including myself.</i>			
Recipient Signature		Date:	

Treatment of Gifts

Unless otherwise determined, all gifts remain the property of Council. The CEO shall make a determination on the retention, use or allocation of any items or services received.

Gift Allocation – Manager to complete			
<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)	
Manager Instructions/ comment			
Manager Signature		Date:	
Manager Name <i>(please print)</i>			
Governance comment <i>(if applicable)</i>			
CEO comment <i>(if applicable)</i>			
CEO Signature		Date:	
<i>The personal information requested on this form is being collected by Council for the purpose of maintaining Council's Gift Register. The personal information will be used solely by Council for this primary purpose or directly related purposes. The employee understands that the personal information provided is for these purposes and that they may apply to Council for access and/or amendment of the information.</i>			