



Gifts or Benefits

Application	Council Staff
Responsible Officer	General Manager
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Authorised by	Council
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Purpose

The purpose of this policy is to provide guidelines in order to ensure Council officials are not compromised in the performance of their duties through innocently or in good faith accepting gifts or benefits which may result in a feeling of obligation or could be construed as an attempt to influence.

Definitions

Council: Carrathool Shire Council

Bribery: is defined as inducement by offering any undue reward by, or to, any person in public office in order to influence his or her behaviour in that office and to influence that person to act contrary to the known rules of honesty and integrity.

Gift/Benefit: Gifts or Benefits, does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation.

Token Gifts: Gifts of a nominal value not exceeding \$50.00.

Gifts of Value: Gifts exceeding \$50.00 value.

Reference

This policy complements other legislation and where it is silent on matters referred to in the following legislation such matters must be followed in accordance with the legislation.

- *Local Government Act 1993*
- *Crimes Act 1900 (NSW)*
- *Independent Commission Against Corruption Act 1988*
- Local Government (General) Regulation 2005
- Designated Officers' Pecuniary Interest Provisions Policy

Policy statements

Councillors and employees must not seek or accept a bribe, or other improper inducement. Councillors and employees must never solicit a gift or benefit under any circumstances, nor should they accept a gift or benefit other than one of token value, which also does not create the perception of being given to create an obligation or is likely to influence.

Gifts or benefits of nominal or token value that do not create a sense of obligation may be accepted. It is the responsibility of each individual council elected member or staff member to ensure that details of any gift given to them is recorded in Council's Gift Register.

- 1) As stated above, Councillors or staff should not solicit gifts or benefits under any circumstances or accept gifts of more than nominal value. Offers of money or gift vouchers should never be accepted (see gifts of value below)

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- 2) Councillors or staff who are offered or given a gift or benefit, even those refused, are required to ensure that the following details are entered in the Gifts Register as soon as is practical:
- Date, time and place of incident
 - Who the gift/benefit was offered to
 - Who offered the gift or benefit and contact details (if known)
 - Description of gift/benefit
 - Response to the offer
 - Any action taken by management
 - Signature of Supervisor (in the case of staff) or the General Manager

In the case of gifts offered or given, which are gifts exceeding the nominal gift threshold of \$50.00, the matter must be reported as soon as is practical to the General Manager.

- 3) Where a gift or benefit of more than nominal value cannot reasonably be refused or returned (eg presentation in a public forum where refusal would cause embarrassment), property is to be regarded as the property of Carrathool Shire Council. Receipt for such gifts must be entered in the Gifts Register and the General Manager advised as stated above.
- 4) Offers of token or nominal value can be accepted where they do not create a sense of obligation in the receiver; however, in the interests of transparency, the particulars should be entered in the Gifts Register.
- 5) A gift or benefit may be accepted if it is received in the course of the official's duty and it relates to the work of Carrathool Shire Council. For example, a book on relevant technical topic. Such gifts become the property of Carrathool Shire Council and must be entered in the Gifts Register.
- 6) Council shall maintain a Gifts and Benefits Register to record offers of gifts and benefits.
- 7) This policy is to be reviewed as required but at least within 12 months of an Ordinary Council Election.
- 8) The contents of this policy will be included in elected member and staff induction programs and will be promoted on an annual basis through memo or newsletters.
- 9) This policy is to be promoted externally and included in tender and expression of interest documents issued by Carrathool Shire Council.

Examples of Various Gifts and Benefits:

Token Gifts (Nominal Value not exceeding \$50.00):

Generally speaking, token gifts and moderate acts of hospitality could include:

- 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 infrequently that have been arranged primarily for, or in connection with, the discussion of official business.
- Free meals of a modest nature, and/or beverages provided to council officials who formally represent their council at work related events.
- Refreshments, of a modest nature, provided at conferences.
- Ties, scarves, coasters, tie pins, pens, diaries, notepads, key rings, 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.



Gifts of Value:

- Offers of money or gift vouchers must never be accepted, regardless of the amount.
- 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 and free training excursions.
- If you receive a gift or benefit of more than token value in circumstances where it cannot reasonably be refused or returned, you should accept the gift and disclose this promptly to the General Manager. You must also ensure that any gifts received are recorded in the Gifts Register as prescribed above.
- Situations should be avoided which could create a perception that gifts or benefits (including hospitality) are being given to influence the behaviour of a council official.
- All reasonable steps must be taken to ensure that immediate family members of council officials do not receive gifts or benefits that could be perceived to be an attempt to influence the behaviour of the council official in question.
- Councillors and designated persons must by law disclose a description of any gift or gifts totalling a value exceeding \$500 made by the same person during a period of 12 months or less (pecuniary interest return form section C – Section 449(3) *Local Government Act 1993*).

Cumulative Gifts:

A series of small gifts, which individually fall below the nominal value threshold, may have an aggregate value that exceeds the nominal value of \$50.00. For the purpose of this policy, gifts given by a particular person or organisation to the same council employee or councillor within a six months period are considered to be a part of a series of gifts forming an aggregate value. Therefore, at the point that the gifts in question reach the specified amount of \$50.00 (in total) they must be treated as gifts of value as prescribed by this policy.

Bribes

Councillors, members of staff and delegates must not offer or seek a bribe. Receiving or offering a bribe is an offence under the *Crimes Act 1900 (NSW)*.

A person who believes that they have been offered a bribe should refuse it and report the matter immediately to the General Manager. The General Manager must then take steps to report the matter to the Independent Commission Against Corruption (ICAC) pursuant to the ICAC legislation. Additionally, the General Manager must inform the NSW Police Service of the incident.

Gifts that are Unable to be Returned

When a gift is received that exceeds the nominated value of \$50.00 or for some other reason cannot be retained by the individual, council must make a decision as to how the relevant gift is disposed of having regard to the nature of the gift and the circumstances in which it was received.

In some circumstances, such as the donation of a technical resource, the gift may be kept by council for the ultimate benefit of the public purse, as it assists council in its operations. Other gifts could be donated to a suitable charity or the items auctioned and the proceeds donated. In the interest of transparency, the process utilised and the reasons for the decision must be documented.



Specific Examples (from Office of Local Government Model Code of Conduct)

Example 1: Gifts, benefits and hospitality

A regular supplier offers the council's purchasing officer a free weekend for two at a beach resort. The officer's impartiality when dealing with the supplier would be compromised if he or she accepts the offer.

Planning and building staff are regularly offered alcohol, food, tickets to major sporting events and free lunches by developers, builders, project managers and suppliers. Staff sometimes accept these gifts without declaring them and argue that they are in return for providing good service and are an accepted way of "doing business". Again, this will be perceived to have compromised the impartiality of the staff concerned.

In these situations staff should, in the first instance, refuse any gift offered. If staff feel obliged to accept gifts, then they should declare the gift and have it recorded in council's gift register. Council may then determine how these gifts are dealt with and could, for example, donate specific items to charity.

Example 2: Acceptance of gifts and bribery

A local council employee is involved in a series of inspections on a building site. During the inspections, the developer offers the employee numerous gifts including alcohol and a present for the employee's new born child. The employee accepts the gifts as he feels they are offered as unconditional and genuine tokens of appreciation for his work, especially as the inspection involved a number of lengthy tasks. The employee believes he is not compromised by the gifts and eventually makes a recommendation that is not in the developer's interests. After the recommendation is made, the developer complains to the council about the employee accepting the gifts.

Although the employee accepts the gifts in good faith, he nevertheless places himself in a vulnerable position. While each of the gifts is of modest value, when viewed in total, the value of the gifts seems quite substantial. The developer is able to manipulate the situation to allege the employee has accepted bribes.

The employee's acceptance of the gifts could also be used as circumstantial evidence of bribery. The employee could not rely on the fact that he made a decision he would have made, regardless of the gifts, as a defence to bribery.

Example 3: Acceptance of gifts and influence

A council's information technology manager attends two meetings with potential suppliers. During the first meeting the suppliers serve tea, coffee and biscuits. The second meeting is held at a restaurant and the suppliers pay for the manager's three course meal.

Both meetings arguably provide the manager's council with benefit, namely the opportunity to discuss the supplier's products. Despite this a contrast can be drawn between the meetings. In the first, the refreshments are only modest in nature and consequently do not create the impression that an attempt is being made to gain the manager's favour. In the second, the nature of the lunch creates the impression that an attempt is being made to compromise the manager's impartiality. The damage of this perception far outweighs any benefit associated with the manager's attendance.

Revision Table

Minute /Date	Amendment Summary	Reason or Reference
0250 / 21.09.2004		
1411 / 16.01.2007		Amended
19.09.2011		Reviewed by General Manager
0593 / 18.03.2014		Reaffirmed
0741 / 16.10.2018		Amended



Council Policy 81

Associated Documents

Form 120 – Gifts and Benefits Form
Form 134 – Special Disclosure of Pecuniary Interest
Code of Conduct

Review

This policy may be amended from time to time and will be reviewed within four years of its adoption (or latest amendment) with reference to any relevant legislation and best practice guides.