

POLICY



Councillor Gifts and Hospitality Policy

1 Purpose

The purpose of this policy is to establish appropriate conduct in circumstances where Councillors are offered gifts, benefits, hospitality or are granted awards or win prizes, whether part of their official duties or while attending functions as Council representatives.

2 Scope

This policy applies to all Councillors including the Mayor.

3 Background

Section 138 of the Act requires a Council to adopt and maintain a Councillor Gift Policy.

4 Definitions

Council	means Hindmarsh Shire Council
Act	means <i>Local Government Act 2020</i>

5 Gifts

5.1 Gifts must never be sought

Councillors must not solicit, demand or request gifts or any personal benefit for themselves or another person by virtue of their position.

5.2 No sense of obligation

No gift may be accepted that could influence, or be perceived to influence, a Councillor in the performance of his or her public or professional duties.

5.3 Prohibited gifts – monetary gifts

In addition to other limitations imposed by this policy, monetary gifts (other than campaign donations) of any value must never be accepted. This includes cash, gift cards and vouchers.

Under the *Public Health and Wellbeing Act 2008*, Council has a statutory requirement to develop a four-year Municipal Public Health and Wellbeing Plan. Council has an obligation to ensure the community has an opportunity to participate in the development of these plans.

5.4 Token gifts

Gifts of token value may be accepted by Councillors provided that the gift does not create a real or perceived sense of obligation that may lead to a perception of preferential service as a result of the gift.

The following should be used as a guide for Councillors in determining whether to accept token gifts. Such gifts may be accepted only when the following have been considered:

- such a gift is offered in an open or public forum and refusal would be obviously discourteous;
- acceptance would not cause any potential perceived or actual compromise or conflict of interest;
- the gift does not have a significant monetary value (less than \$50); and
- the gift is not offered on a regular basis.

There is no requirement to declare or record token gifts in the Council Gifts Register.

5.5 Official gifts

From time to time individuals or organisations may offer gifts of goodwill to the Council.

Councillors may be involved in conferences or social, cultural, community, industry events where official gifts are presented or exchanged. Where it would appear to be impolite or inappropriate to refuse the offer, it is reasonable for Councillors to accept official gifts on behalf of Council. The Chief Executive Officer must ensure that any such official gift is recorded in the Council Gifts Register.

Unless otherwise determined as set out below, such gifts shall be considered to be the property of Council and may be displayed in an appropriate and secure location for public viewing.

In some circumstances, including where the item may not be suitable for public display or the gift is of a personal nature to the recipient, the Chief Executive Officer will use his or her discretion as to the appropriate use of the official gift. A record will be made in the Council Gifts Register in the event that the gift is used for purposes other than Council purposes.

5.6 Significant occasion gifts

A significant occasion gift from council to the Mayor or a Councillor must not exceed \$110 in value.

All significant occasion gifts are to be recorded in the Council Gifts Register.

5.7 Gifts of appreciation

Demonstrating appreciation for services received from Council should not involve the presentation of a gift or benefit. Acceptable alternatives may include a letter of thanks or a thank you card as these are considered less likely to result in a situation that may compromise or be perceived to compromise either party.

If such a gift is offered in an open or public forum and refusal would be obviously discourteous, to reduce the possibility of causing offence, Councillors are encouraged to make reference to this Policy and the importance of transparent and ethical behavior.

Where acceptance would cause any potential perceived or actual compromise or conflict of interest, the gift must not be accepted.

If circumstances make it impractical to not accept the gift it is to be surrendered to the Chief Executive Officer for a decision as to the appropriate disposal. Any accepted gifts over the value of \$50 must be recorded in the Council Gifts Register.

5.8 Provision of services

Services provided free of charge or for a reduced rate are deemed gifts under this policy and must be declared at any value.

5.9 Sponsorship gifts

Gifts that are received as part of a sponsorship arrangement are deemed gifts under this policy and must be declared at any value.

6 Hospitality

Councillors, in an official capacity, will from time to time receive invitations of hospitality to attend various functions and events. Official capacity is that the Mayor or Councillor receives the invitation in the name of Mayor or Cr or the invitation is received by the Council Office or via the Councillor official e-mail.

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

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 may give rise to the perception of a conflict of interest.

If acceptance of the hospitality is likely to create the impression that an attempt is being made to compromise the impartiality of the Councillor, or could be perceived as a conflict of interest, the offer of hospitality should be politely refused.

Offers of hospitality that is more than reasonable in the circumstances and is not viewed as being connected to official Council business or part of the accepted meal at a conference or seminar should be refused or appropriate payment for the hospitality must be made by Council.

Offers of hospitality that is more than reasonable in the circumstances, whether refused or paid by Council, must be recorded in the Council Gifts Register.

7 Awards and prizes won at conferences / seminars

Prizes or awards valued at over \$50 that are won at functions attended at Council's expense, must immediately become the property of Council. The Supreme Court has ruled that such prizes or awards are owned by the person/organisation providing 'consideration' for the attendance. Councillors attending functions as Council representatives, and who make no financial contribution to the attendance, lose entitlement to any award or prize won as a result of attending the function.

Circumstances in which a person may be entitled to keep a prize or award over \$50 are where personal payment has been made for the attendance, or the person pays for a raffle ticket that wins a prize. In each case the recipient has provided consideration for the prize/award and may lay legal claim to its title.

From an ethics point-of-view, recipients of such prizes could potentially be seen as being influenced by the sponsor of the prize. Prizes and awards valued at over \$50 must therefore be reported as soon as possible to the Chief Executive Officer, who must determine the ownership of the item and the appropriate action to be taken, as per this policy.

8 Benefits

A Councillor must not knowingly accept travel or hospitality (including meals, entertainment or accommodation) sponsored wholly or partly by any person, organisation or business, where such acceptance implies an obligation on the recipient. However, reasonable benefits may be accepted in circumstances where it is:

- approved by the Chief Executive Officer;
- provided at a function or event where the Councillor is acting in an official capacity on behalf of Council;
- provided at rates that are openly available to people other than Councillors; or
- of value less than \$50 and by reason of its triviality could not be construed as creating an obligation.

9 Campaign donation returns

Division 10 of the Act outlines the requirements in relation to Campaign Donation Returns.

Section 309 – Certain gifts not to be accepted

- (1) *It is unlawful for a candidate or a person acting on behalf of a candidate to receive during the donation period a gift made to or for the benefit of the candidate, being a gift the amount or value of which is equal to or exceeds the gift disclosure threshold unless –*
- (a) *the name and address of the person making the gift are known to the person receiving the gift; or*
 - (b) *at the time when the gift is made—*
 - (i) *the person making the gift gives to the person receiving the gift the person's name and address; and*
 - (ii) *the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.*

10 Conflict of interest

Gifts must not be accepted which give the appearance of a past, present or future conflict of interest.

Section 128 of the Act provides that one or more gifts with a total value of, or more than, \$500 received within the preceding 5 years gives rise to a material conflict of interest and the person

who received the gifts must not be involved in any Council decision relating to the person or entity who gave the gifts.

11 Refusal of gift, benefit or hospitality

Where a gift is politely refused, to reduce the possibility of causing offence, Councillors are encouraged to make reference to this Policy and the importance of transparent and ethical behaviours.

If a Councillor refuses a gift on the basis that they believe the gift was a deliberate attempt to receive 'preferential treatment', the Chief Executive Officer must be advised immediately.

Multiple gifts from the same person/organisation are considered inappropriate and should not be accepted.

12 Declaration of gift, benefit or hospitality

Any gift, benefit, hospitality, award or prize that must be declared is to be done by using the Declaration of Gifts Form and the details recorded in the Council Gift Register. The Council Gifts Register is administered by the Chief Executive Officer. It is the individual's responsibility to complete the appropriate form and forward it to the Chief Executive Officer within 14 days of receipt of the gift (or if the gift is received overseas within 14 days of returning to Australia). In accordance with this Policy, certain gifts refused must also be disclosed.

All Councillors must declare any gifts received, of the value of \$500 and above, on their Personal Interests Returns for any gifts received during the period of the return, section 9 *Local Government (Governance and Integrity) Regulations 2020*.

12.1 Council Gift Register

The CEO maintains a Gifts Register which is available for public inspection on request.

13 Disposal of gifts

The Chief Executive Officer may dispose of gifts by any of the following methods:

- Return to the original recipient
- Return to sender
- Disposal by resolution of Council
- Transfer as a gift to a recognised charity or community group
- Reduction to scrap
- Destruction

If a gift does not have a public value or is not of particular significance regarding its historical, cultural or protocol value, or was given to a Councillor by virtue of the discharge of that person's duties, the recipient may, at the discretion of the Chief Executive Officer, buy the gift from Council. The purchase price must be the manufacturer's wholesale value of the gift in the place of origin at the time of purchase as determined by the Chief Executive Officer. If there is difficulty in assessing the value, a valuation must be obtained by Council from an appropriately experienced person or body.

14 Policy breaches

Breach of this policy may lead to disciplinary action under the Councillor Code of Conduct. Further, a breach of the Act may lead to prosecution.

15 The GIFT test

Developed by the Victorian State Services Commission, the GIFT test (Appendix 2) is a good example of what Councillors should think about when deciding whether to accept or refuse a gift, benefit or hospitality.

16 Administrative updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.

17 Related documents

Local Government Act 2020

Hindmarsh Shire Council Councillor Code of Conduct

Declaration of Gifts Form – available on SharePoint

18 Human rights charter

This policy is consistent with the *Charter of Human Rights and Responsibilities Act 2006*.

19 Version history

Councillor Gifts and Hospitality Policy		Policy Category	Council
Version Number	02	Policy Status	ADOPTED
Approved/Adopted By	COUNCIL	Approved/Adopted on:	
Responsible Officer	CEO		
Version History	Date	Version	Description
	06 December 2021	01	Initial policy
		02	Policy updated in line with <i>Local Government Act 2020</i>

Appendix 1 The GIFT test

Developed by the Victorian State Services Commission, the GIFT test is a good example of what to think about when deciding whether to accept or refuse a gift, benefit or hospitality.

G	Giver	<p>Who is providing the gift, benefit or hospitality and what is their relationship to me?</p> <p>Does my role require me to select contractors, award grants, regulate industries or determine government policies?</p> <p>Could the person or organisation benefit from a decision I make?</p>
I	Influence	<p>Are they seeking to influence my decisions or actions?</p> <p>Has the gift, benefit or hospitality been offered to me publicly or privately?</p> <p>Is it a courtesy, a token of appreciation or highly valuable?</p> <p>Does its timing coincide with a decision I am about to make?</p>
F	Favour	<p>Are they seeking a favour in return for the gift, benefit or hospitality?</p> <p>Has the gift, benefit or hospitality been offered honestly?</p> <p>Has the person or organisation made several offers of the last 12 months?</p> <p>Would accepting it create an obligation to return a favour?</p>
T	Trust	<p>Would accepting the gift, benefit or hospitality diminish public trust?</p> <p>How would I feel if the gift, benefit or hospitality became public knowledge?</p> <p>What would my colleagues, family friends or associates think?</p>