



Ararat Rural City

Councillor Gifts Policy

DOCUMENT CONTROL

Category Type: Policy

Type: Council

Responsible Officer: Chief Operating Officer

Last Review Date: 18 May 2021

Date Approved: 30 September 2025

Next Review Date: September 2029

Revision No: 9

Stakeholder Engagement:

Councillors

Chief Executive Officer

Chief Operating Officer

INTENT

This Policy provides guidance to Councillors and members of Delegated Committees about receiving or being offered gifts, benefits or hospitality in connection with their role as Councillor. The giving and receiving of gifts, benefits and hospitality from a person or organisation may result in a potential conflict of interest or breach of the Act. The objective of this policy is to limit the number of gifts made or accepted and to promote public confidence in the integrity of Council

This Policy has been prepared to satisfy the requirements of section 138 of the Act. It includes procedures for the maintenance of a Councillor Gifts Register and sets out the minimum value of disclosable gifts.

SCOPE

The objective of the Councillor Gift Policy is to formalise the minimum standards in relation to offers of gifts, benefits and hospitality and as a result seeks to promote:

- Accountable Practices by providing clear direction and guidance to Councillors in relation to what may be accepted and what may not;
- Transparency by making the Councillor Gift and Benefits Register readily available and easily accessible on Council's website;
- The demonstration of integrity, impartiality and accountability in relation to the appropriateness or lack of, in relation to the appropriateness or lack of, in the receiving of gifts, benefits and hospitality;
- Community trust and confidence in decision making, and that decisions are made free of favouritism, influence and conflicts of interest or bias.

POLICY

1. GIFTS, BENEFITS AND HOSPITALITY

This policy is founded on the requirement for transparency and seeks to minimise improper practices and maintain the Council's good reputation.

Councillors should at all times be aware of the Local Government Act 2020 provisions regarding gifts especially in relation to conflict of interests and election donations. Councillors will take action as required by this policy.

Accordingly, the actions of Councillors must be consistent with those principles.

Guiding Policy Principles

- Complying with all legislation and policy obligations in relation to gifts, benefits and hospitality
- Politely decline in the first instance any offer of a gift, benefit or hospitality irrespective of value.
- Appropriately manage gifts, benefits and hospitality to avoid potential, actual or perceived conflicts of interest.
- Avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from Councillors or Council.
- Not solicit, demand or request gifts, benefits or hospitality for themselves or any other

- person, by virtue of their position.
- Not accept monetary gifts (or gifts that can be easily converted to monetary value such as gift cards) of any value (fully disclosed election donations excluded)
- Refuse gifts, benefits and hospitality that may adversely affect the Councillor's or Council's standing or bring them into disrepute.
- Ensure any gifts, benefits and hospitality that is offered is provided for a legitimate business purpose, furthering the business goals, policy objectives and priorities of Council and within reasonable community expectations.
- Report any incidents where a bribe and/or cash is offered in accordance with Ararat Rural City Council's Public Interest Disclosure Procedures.

A gift offer is either token or a non-token in nature.

1.1. TOKEN GIFT

Gifts of a token values (less than \$50) may be accepted by Councillors, provided that the Councillor advises the Mayor of the gift.

The following should be used as a guide in determining whether to accept token gifts. Such gifts may be accepted only when the following has 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 significant monetary value.
- The gift is not offered on a regular basis.

There is no requirement to record token gifts in the Gift Register, unless the cumulative value of a gift from the same provider exceeds \$50. Examples of token gifts include box of chocolates, homemade goods, small souvenir, a cup of coffee.

1.2. NON-TOKEN GIFT

A non-token gift, benefit or hospitality is offered with a value of more than \$50. Non-token gift offers must be politely declined in the first instance. If a non-token gift is to be accepted, it must be managed in accordance with this policy. A gift can be any item of value – money, voucher, entertainment, travel, commodity, services, property – that a person or organisation provides.

All non-token gifts, benefits and hospitality received must be recorded in the Gift Register.

When deciding whether to accept a gift, benefit or hospitality, Councillors should give consideration to the GIFT test and HOST test shown in Appendix 1 & 2.

2. GIFTS RECEIVED ON BEHALF OF COUNCIL

From time-to-time individuals or organisations may offer gifts of goodwill to the Council organisation. The Chief Executive Officer will ensure that any such official gift is recorded in the Council Gifts Register.

Councillors may be involved in conferences or social, cultural, community, and industry events

where official gifts are presented or exchanged. Where it would appear to be impolite or inappropriate to decline the offer, it is reasonable for official representatives of Council to accept official gifts on behalf of Council. 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 their discretion as to the appropriate use of the official gift.

A record will be made in the Council's Gift Register in the event that the gift is used for purposes other than Council purposes.

A Councillor may accept a significant occasion gift on behalf of Ararat Rural City Council.

A significant occasion gift to the Mayor must not exceed \$500. A significant occasion gift to a Councillor must not exceed \$250.

All significant occasion gifts must be declared and the details recorded in the Council Gifts Register.

3. HOSPITALITY

Councillors, in an official capacity, will from time to time receive invitations of hospitality to attend various functions and events.

Where hospitality is only modest in nature 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 under the Local Government Act 2020.

In some circumstances a Councillor may attend the event if the Council either fully reimburses the organisation for the full cost of hospitality or if the Councillor personally pays for their own attendance.

If acceptance of 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 declined.

Offers of hospitality, whether accepted or declined, must be recorded in the Council Gifts Register.

4. ANONYMOUS GIFTS

In accordance with Section 137 of the Local Government Act 2020, a councillor must not directly or indirectly accept a gift for the benefit where the amount or value is equal to or exceeds the gift disclosure threshold, unless –

- a) the Councillor knows of or is given the name and address of the person making the gift; and
- b) The Councillor reasonably believes that the name and address provided are true.

If for any reason a Councillor finds themselves in possession of a gift when they don't know the name and address of the person who gave the gift, the Councillor can give the gift to the Council within 30 days to avoid committing an offence

A Councillor who is found guilty of a breach of section 137 of the Act must pay to the Council the amount or value of the gift accepted.

5. CONFLICT OF INTEREST

Gifts must not be accepted which give the appearance of a conflict of interest. A conflict of interest means a general conflict of interest within the meaning of section 127 of the Local Government Act and a material conflict of interest within the meaning of section 128 of the LGA.

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.

Councillors may seek advice from the CEO or other appropriate officers if they need assistance determining if they have a conflict of interest, but must take full responsibility to identify, manage and disclose a conflict of interest.

If the acceptance of a gift, benefit or hospitality relates to an interest that is remote or insignificant in accordance with s128 of the Local Government Act 2020, the Councillor will not be considered to have a conflict of interest.

6. ATTEMPTS TO BRIBE

A Councillor who receives an offer a gift, benefit or hospitality they believe is an attempt to bribe must refuse the offer. It is important that the Councillor act immediately to minimise any potential for negative consequences, by taking the following steps:

- Terminate the interaction with the person making the offer;
- Report the matter to the CEO to place on record your refusal of the offer;
- Lodge a public interest disclosure in accordance with the Ararat Rural City Council Public Interest Disclosure Procedures.

A Councillor who believes another person within the Council may have solicited or been offered a bribe which they have not reported, must notify the CEO or report the matter in accordance with Ararat Rural City Council Public Interest Disclosure Procedures.

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; and
- From an ethical 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 and accommodation) sponsored wholly or partly by any person, organisation or business, where such acceptance implies an obligation on the recipient. However, reasonable hospitality may be accepted in circumstances where it is:

- approved by the Mayor on the advice of the Chief Executive Officer;
- provided at a function or event where the person 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. PROCUREMENT AND TENDER PROCESSES

Councillors are prohibited from accepting any gifts, benefits or hospitality from a current or prospective supplier made during a procurement or tender process by a person or organisation involved in the process.

Where a gift is received or there are irregular approaches from suppliers, Councillors are required to notify the Mayor and CEO to record their refusal and any action.

10. ELECTION CAMPAIGN GIFTS

A Councillor must disclose, in their Election Campaign Donation Return, any Gift with a value which is equal to or exceeds the Gift Disclosure Threshold and which was received during the Donation Period by or on behalf of the Councilor to be used for or in connection with their election campaign while they are a candidate for election, unless:

- a) The Gift was made in a private capacity to the Councillor for their personal use; and
- b) The Councillor did not use and will not use the gift solely or substantially for a purpose

related to the election.

It is unlawful for a Councillor, or for someone acting on their behalf, to receive any Anonymous Gift with a value which is equal to or exceeds the Gift Disclosure Threshold during the Donation Period while they are a candidate for election.

11. REGULATORY PROCESSES

Where a regulatory process is underway such as a planning permit application, a Councillor is prohibited from accepting any gift, benefit or hospitality from any individual or group that may be involved with the regulatory activity

12. BIENNIAL PERSONAL INTEREST RETURNS

Councillors must lodge an initial, and biennial interests returns, which contain matters prescribed in the Local Government (Governance and Integrity) Regulations 2020.

A personal interests return must include the details of any gift received by the specified person, the value of which equals or exceeds \$500 or the threshold amount fixed by the Secretary, including gifts in the form of goods or services and multiple gifts that together equal or exceed that amount, which was received at any time since the specified person lodged the preceding initial or biennial personal interests return.

A summary of the personal interest's returns are made available on Council's website.

13. POLICY BREACHES

As per the Councillor Code of Conduct, Councillors committed to the following:

- We commit to compliance with our statutory obligations in relation to gifts and hospitality. We also undertake to comply with Council's policy to disclose all gifts, gratuities and favours in kind offered and/or accepted in my capacity as a Councillor, in accordance with the Council's Gifts, Gratuities and Favours in Kind Policy.
- In addition, we commit to notify the Chief Executive Officer if in the conduct of our duties, we receive an inappropriate offer of a gift or hospitality of any kind.

Councillors also committed to ensure their behaviours do not bring discredit to Council and committed to not intentionally misuse their position to gain or attempt to gain directly or indirectly, an advantage for themselves or for any other person.

Councillors must take all reasonable steps to ensure that their immediate family members (parents, spouse, children and siblings) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

Where a gift is received on behalf of the Council, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in the Council's Gift Register.

Gifts equal to or above the gift disclosure threshold received in the twelve months prior to election from a person or body that has a direct interest in a matter may give rise to an interest because of receipt of an applicable gift.

Campaign donations must be disclosed in the campaign donation return.

Councillors must not seek or accept any immediate or future reward or benefit in return for performance of any duty or work for the Council.

Any breaches of this Policy in the case of a Councillor will be to the provisions of the Local Government Act 2020.

14. DISCLOSURE PROCEDURE

Councillors must record the receipt of a gift, benefit or hospitality using the following procedure:

- In the interest of transparency and to assist with monitoring the frequency and nature of gifts, all gifts, benefits and hospitality received, above the value of \$50 must be recorded in the Gift Registry.
- Within 5 business days of the offer complete a Gift Registration Form and forward to the Governance team for recording in the Gift Register.
- The following details are to be included.
 - Councillor's names
 - Date gift, benefit or hospitality was received; and
 - A detailed description of the gift, benefit or hospitality received; and
 - The value of the gift, benefit or hospitality is unknown, an approximately value; and
 - The name of the person or organisation that provided the gift, benefit or hospitality; and
 - If a non-token gift has been received on behalf of Council, a notation that it is the property of the Council.

15. GIFT REGISTER

The Gift Register will be maintained by the Governance team and reported to the Audit and Risk Committee Audit and Risk Committee every 6 months.

16. TRAINING

Council will ensure that all Councillors and members of Delegated Committees received induction and refresher training in the operation of this Policy and associated procedures, including:

- Information about the aim, principles, accountabilities and requirements of this policy.
- Practical guidance on how to comply with this Policy, i.e. where to obtain gift offer

declaration forms and how to refuse a gift without giving offence.

- Advice that conduct constitutes a breach of this Policy may also constitute a breach of the Councillor Code of Conduct, the Act, bribery or a form of corruption.

17. 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 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.

TERMS/DEFINITIONS

TERM	DEFINITION
Benefit	Something which is believed to be of value to the receiver, such as a service i.e. access to a sporting event, preferential treatment, access to confidential information, accommodation, personal services, pleasure or holidays.
Bribe	A bribe is an offer of money or other inducement made with the intention to corruptly influence a Councillor, officer or contractor in the performance of their duties. Bribery or attempted bribery of a public official is a criminal offence.
CEO	Chief Executive Officer
Conflict of Interest	The Local Government Act 2020 requires Councillors to declare General or Material Conflicts of Interest. A conflict of interest is a conflict between a Councillor's public duty to act in the best interest of the Council and their private interests (financial or non-financial). A conflict exists whether it is: • Real – it currently exists • Potential – it may arise, given the circumstances • Perceived – members of the public could reasonably form the view that a conflict exists, or could arise, that may improperly influence the person's performance of their duty to the Council, now or in the future.
Council	Ararat Rural City Council
Gift	Section 3 of the Local Government Act 2020 defines a gift as meaning 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

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	c) the making of a payment or contribution at a fundraising function.
Gift Disclosure Threshold	Means \$500 or a higher amount or value prescribed by the regulations and notwithstanding the limits specified in this policy
Gift Disclosure	Section A Disclosable Gift means 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 LGA on public transparency, The Ararat Rural City Council policy is that ALL gifts, or offers whether accepted or not, are disclosable.
Hospitality	Where a meal or service is offered which has more than nominal value and is not viewed as being connected to official Council business or part of the accepted meal at a conference or seminar.
Official Gift	A gift received by Councillors as representatives of the City or Council. These gifts may be received from a Sister City, organisations or corporations that are bestowing a corporate gift (e.g. plaques, plates, vases, trophies, art work) or souvenir to the City, or as a token of appreciation for a contribution to a conference or industry event.
Personal Interests Returns	Councillors must lodge an initial and biannual personal interests returns with the Chief Executive Officer, which contain matters prescribed in the Local Government (Governance and Integrity) Regulations 2020.
Prohibited Gift	Monetary gifts of any value including: cash, credit, gift cards, vouchers
Significant Occasion Gift	A gift, which may be given by Council to the Mayor or a Councillor as a gesture of goodwill for official or ceremonial purposes.
Token Gift	Is of such a nature and minimal value (under \$50) that it could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter. The token gift does not create a sense of obligation in the receiver that will influence, or appear to influence, the exercise of their official duties. In the event that a gift might reasonably be perceived to influence, or appear to influence, the recipient, it cannot be defined as a token gift.

REFERENCES

- Local Government Act 2020.
- Local Government (Governance and Integrity) Regulations 2020
- IBAC Local Government Integrity Framework Review (March 2019)
- Victorian Public Sector Commission – ‘GIFT’ test
- Gift Register
- Gifts Register Form
- Personal Interest Return

RELATED DOCUMENTS

- Councillor Code of Conduct
- Fraud and Corruption Policy
- Public Transparency Policy

APPENDICES

1. GIFT
2. HOST

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APPENDIX 1

The *GIFT* Test

The Victorian Public Sector Commission's GIFT test is a good example of what to think about when deciding whether to accept or decline a gift, benefit or hospitality.

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

GIFT	VALUE	ACTION
Any Gift, Benefit, Award or Prize	Under \$50	Nil
Any Gift, Benefit, Award or Prize	\$50 - \$100	Declare and Retain
Any Gift, Benefit, Award or Prize	Over \$100	Declare and Surrender
Cash or Gift Card	Any Value	Decline and Declare

APPENDIX 2

The *HOST* Test

The HOST test is a good reminder of what to think about when deciding whether to provide an offer of a gift, benefit or hospitality.

H	Hospitality	To whom is the gift, benefit or hospitality being provided? Will recipients be external business partners, or individuals of the host organisation?
O	Objectives	For what purpose will hospitality be provided? Is the hospitality being provided to further the conduct of official business? Will it promote and support government policy objectives and priorities? Will it contribute to staff wellbeing and workplace satisfaction.?
S	Spend	Will public funds be spent? What type of hospitality will be provided? Will it be modest or expensive, and will alcohol be provided as a courtesy or an indulgence? Will the cost incurred be proportionate to the benefits obtained?
T	Trust	Will public trust be enhanced or diminished? Could you publicly explain the rationale for providing the gift or hospitality? Will the event be conducted in a manner which upholds the reputation of the public sector.