



## **ETHICAL GOVERNANCE: GIFTS AND BENEFITS POLICY**

Adopted: 28 December 2016

TRIM: 341927.2016



## ETHICAL GOVERNANCE: GIFTS AND BENEFITS POLICY

### 1. PURPOSE

- 1.1 Council officials must act, and be perceived to act, with integrity at all times. The acceptance of a gift or benefit by any Council official may have the capacity to undermine the good reputation of Council and of individual Council officials.
- 1.2 This policy aims to provide guidance to Council officials in identifying, assessing and managing the offer of any gift or benefit in accordance with Council's Code of Conduct and statutory requirements, and to enhance the reputation of Council as an organisation with the highest standards of ethical governance.

### 2. LEGISLATIVE REQUIREMENTS

*Crimes Act 1900*

*Independent Commission Against Corruption Act 1988*

*Local Government Act 1993*

*Public Interest Disclosures Act 1994*

### 3. DEFINITIONS

**Council official** includes Councillors, members of Council staff, members of Council committees, delegates of Council, conduct reviewers and volunteers.

**Delegate of Council** means a person or body, and the individual members of that body, to whom a function of Council is delegated.

**Bribe** means a gift or benefit given specifically for the purpose of obtaining favours from, or to influence the decision or behaviour of, a Council official in order to benefit a person or persons or something.

**Gift or benefit** means any product or service, including hospitality, voluntarily provided to a Council official, as further explained in this policy, at no charge or at a discounted charge or fee, or for any other consideration, as a consequence of the recipient's role as a Council official. It includes gifts or benefits received by immediate family members or associates of a Council official. It includes any circumstance where there was no opportunity given to refuse the gift or benefit. It does not include a political donation or gift which is dealt with under the *Environmental Planning and Assessment Act 1979*.

**Token value** means the monetary limit of the value of any gift(s) or benefit(s) which may be accepted by a Council official and which also requires a declaration in Council's Gifts and Benefits Register. (This value is set at the amount of \$50 and so any gift or benefit valued at less than the amount of \$50 is generally considered to be of token value in accordance with this policy. The intention of the donor, however, must also be considered when a Council official is deciding whether or not to accept a gift or benefit of token value.)

#### 4. POLICY STATEMENT

##### **Dealing with offers of a gift or benefit**

- 4.1 The acceptance or otherwise of a gift or benefit by any Council official must be properly managed so that any such gift or benefit is not provided as a “*gift of influence*” where there is an intention by the donor to receive favourable treatment. Furthermore, it is equally important how the acceptance of any such gift or benefit might be perceived by any impartial observer, regardless of the type or value of the gift or benefit.
- 4.2 All Council officials should be aware that the acceptance of a gift or a benefit may appear to be appropriate in some situations but may constitute corrupt conduct, or be perceived to constitute corrupt conduct, in other situations. Each situation must be carefully assessed on its own merits. A Council official who requires assistance in dealing with the offer of a gift or benefit should seek appropriate advice from the Chief Executive Officer (the CEO) or the Governance Coordinator.
- 4.3 Any gift or benefit which is offered to a Council official, irrespective of whether or not the gift or benefit may be kept or returned by the recipient, or is of token value, as defined by this policy, shall be immediately declared by the intended recipient using Council’s Gift and Benefit Declaration Form.
- 4.4 Whenever possible, Council officials are encouraged not to accept gifts or benefits of any kind. A token gift or benefit of less than \$50 in value (other than money) may be accepted by a Council official, provided that its acceptance is appropriate and does not contravene the provisions of any other clause contained in this policy. Although a token gift or benefit may be less than \$50 in value and may otherwise be accepted it must be declared in the Gifts and Benefits Register.
- 4.5 A Council official must not accept, under any circumstances, an offer of money (cash or cheque or equivalent), irrespective of the amount of money offered. The details of any such incident must be reported immediately to the CEO.
- 4.6 If the offer of a gift or benefit to a Council official appears to be a bribe or an attempt to influence a Council official in his or her official capacity, the Council official must decline the offer and then inform the CEO immediately, providing details of such an incident. The CEO will inform the Independent Commission Against Corruption and the NSW Police, if appropriate, immediately regarding the details of such an incident.
- 4.7 Council officials shall avoid situations in which the appearance may be created that any person or body, through the provision of hospitality and other gifts or benefits of any kind, is securing or attempting to secure a favour from that Council official and/or from Council.

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- 4.8 A gift or benefit must not be accepted by any Council official who is, or could expect to be, or who has been during the past 12 months prior to the date of the offer of the gift or benefit, directly involved in exercising discretionary judgment relating to any matter involving the donor.
- 4.9 Councillors must consider their disclosure obligations when completing their Disclosures by Councillors and designated Persons Return required under section 449 of the *Local Government Act 1993*. If the value or cumulative value of gifts or benefits, from one donor should exceed the amount of \$500 in the return year, the Gifts Section of the return Form must be completed by the recipient, in addition to the recipient making the declaration of such gift(s) or benefit(s) in Council's Gifts and Benefits Register.

### **Solicitation of gifts and benefits**

- 4.10 The solicitation of gifts and benefits by a Council official is strictly prohibited. This constitutes corrupt behaviour which is unlawful.
- 4.11 If a Council official becomes aware of another Council official soliciting gifts or benefits, then he or she should report the matter immediately to the CEO. Such disclosure may be treated as a public interest disclosure. The CEO shall report the matter immediately to the Independent Commission Against Corruption.

### **Gifts and Benefits Register**

- 4.12 The details of any offer of a gift or benefit to a Council official, including the details of any offer which must be refused, must be declared in the Gifts and Benefits Register, using the gift and benefit declaration form attached to this policy, irrespective of whether such an offer of a gift or benefit is accepted or not.
- 4.13 Subject to clause 4.14 below, gift and benefit declaration forms, when completed by a particular Council official, must be reviewed as follows:
- a) For a member of Council staff - by the relevant director;
  - b) For the Mayor, Councillors and directors - by the CEO;
  - c) For the CEO - by the Mayor.
- 4.14 Gift and benefit declaration forms, relating to any offer of cash or its equivalent, must be reviewed by the CEO
- 4.15 All completed and reviewed gift and benefit declaration forms must be forwarded to the Governance Coordinator for recording in Council's records system and for their details to be entered into the Gifts and Benefits Register.
- 4.16 Gifts or benefits which appear to be associated with a Council officer's official role and which are offered to immediate family members of the official are also

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subject to this policy and they must be declared in the Gifts and Benefits Register.

- 4.17 The Governance Coordinator is responsible for monitoring the Gifts and Benefits Register and all Gift and Benefit Declaration forms completed by Council officials. The Governance Coordinator shall provide a report to the CEO and the Head of Audit and Risk, at the end of each financial year, setting out the number of completed Gift and Benefit Declaration forms, the types of gifts and benefits declared by Council officials, and any significant trends pertaining to offers of gifts and benefits so declared by Council officials.

### **Gifts to immediate family members**

- 4.18 Council officials should take all reasonable means in order to ensure that their immediate family members are also not recipients of offers of gifts or benefits that could be perceived as an attempt to influence the behaviour of the Council official. Immediate family members ordinarily include parents, spouses, domestic partners, children, grandchildren and siblings. The Gifts and Benefits Register must also be used to declare and to manage offers of gifts and benefits to immediate family members, as such offers of gifts or benefits could also be perceived as being offers associated with the role of the Council official.

### **Prizes and incentive schemes**

- 4.19 A Council official must not enter any competition or receive any prize in any competition sponsored by any entity or person that has business dealings with Council, or receive any other prize, incentive (such as additional points for frequent travel), gift, or benefit, in a competition or raffle, which could create a sense of obligation on his or her part or the part of the donor, or which could affect his or her discretionary judgment as a Council official. The details of any offer of a prize or incentive to a Council official must be entered into the Gifts and Benefits Register.

### **Cultural considerations**

- 4.20 Sometimes people might be tempted to offer a gift or benefit to a Council official because they believe that it is expected or normal practice, because such practice is perceived to be customary in regard to business dealings and professional life in many other societies. Nevertheless, culture or traditions, such as the practice of Christmas gift-giving, should never be used as an excuse to accept inappropriate gifts or benefits, including monetary gifts and other items disguised in parcels, packets or envelopes. Council officials should use their best endeavours to ensure that inappropriate gifts or benefits are refused with a proper explanation, courtesy and due regard to cultural sensitivities.

### **Token gifts and benefits**

- 4.21 Subject to the provisions of all other relevant clauses of this policy, Council officials may only accept token gifts or benefits which do not create a sense of

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obligation on their part or the part of the donor, or which cannot affect, or be perceived to affect, their discretionary judgement as a Council official. Nevertheless, the details of all token gifts or benefits must be entered into the Gifts and Benefits Register.

4.22 Generally speaking, token gifts and benefits include:

- A) Free or subsidised meals, beverages or refreshments provided in conjunction with:
  - a) The discussion of official business;
  - b) Council work-related events such as training, education sessions and workshops;
  - c) Conferences;
  - d) Council functions or events; and
  - e) Social functions organised by groups, such as Council committees and community organisations;
- B) Invitations to and attendance at local social, cultural or sporting events;
- C) 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 (such as providing a lecture/training session/address);
- D) Ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

#### **Gifts and benefits of value**

4.23 Council officials shall not accept gifts and benefits that have more than a token value. Gifts and benefits of value include, but are not limited to, tickets to major sporting events such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

4.24 Subject to clause 4.26 of this policy, any gift or benefit of value must be returned to the person or body that is the donor. If a gift or benefit of value is to be returned in person, this should be done in the presence of a witness. Details of the circumstances and details of the nature and value of such gift or benefit must be entered into the Gifts and Benefits Register.

4.25 If a Council official receives a gift or benefit of more than token value in circumstances where such a gift or benefit cannot be reasonably refused or returned (such as at a public forum where attempts to return the gift or benefit would cause significant embarrassment, or a wrapped gift which cannot be opened in the presence of the donor, or gifts accepted for protocol reasons or anonymous gifts received through the mail or left without a return address) the Council official should receive the gift or benefit and promptly disclose the

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circumstances, nature and value of the gift or benefit in the Gifts and Benefits Register. In addition, when a gift or benefit of value is received by a Council staff member, the circumstances, nature and value of such a gift or benefit should be reported to the official's director and/ or the CEO. All such gifts and benefits become Council property and they must be handed over promptly by the recipient to the CEO or to the Governance Coordinator who will provide a receipt on behalf of Council and dispose of the gift or benefit in accordance with this policy.

### **Disposal of gifts**

- 4.26 If a gift or benefit is received by a Council official, which should not be accepted by the Council official and which cannot be returned to the donor, such gift or benefit must be disposed of by Council in a transparent manner.
- 4.27 Some options for the management of the gift or benefit include:
- a) Sharing the gift amongst all staff (only for perishable food items);
  - b) Donation for lucky door prizes at Council's annual staff function (for non-perishable items or gifts of bottles of wine);
  - c) Donation to Council's Library (for suitable books and DVDs);
  - d) Donation to locally-based community organisations, as recommended by the Coordinator Community Development (for toys, clothing and the like).

### **Giving gifts or benefits to other agencies, officials or persons**

- 4.28 There may be occasions when it is appropriate for Council officials to give gifts or benefits to individuals from other public or private bodies such as a modest token of appreciation for a presentation or a gift for protocol reasons.
- 4.29 Permission for the giving of gifts or benefits by Council officials must be obtained from the CEO and the details must be entered into the Gifts and Benefits Register. However, the Director Community and Culture may approve the giving of prizes by the Council Library and the donation of tickets for performances or lessons by artists at Casula Powerhouse Arts Centre to community organisations, local schools and worthy young persons from the local community up to a maximum value of \$500 with details of any approval being entered into the Gifts and Benefits Register.
- 4.30 **Gifts of flowers and fruit by Council to members of Council staff or their relatives – special circumstances**
- The CEO or a director may approve a gift of flowers and/ or a basket of fruit by Council, up to a value of \$100, to a member of Council staff who is seriously ill or may approve a gift of flowers or a donation to a staff member's charity of choice, up to an amount of \$100, on the occasion of the death of a member of Council staff, their spouse, partner or child.

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### **Management responsibilities**

- 4.31 If a particular service unit of Council is experiencing a high incidence of offers of gifts or benefits, Council directors and/ or managers should consider informing regular customers of Council (by personal letter, posters or other means) that gifts or benefits should not be offered to Council officials and that Council would prefer to receive feedback about exceptional service by Council officials through other means such as a letter, fax, email or telephone call.
- 4.32 Council officials should be aware that gifts and benefits are more likely to be offered to them at certain times of the year such as prior to Christmas, during Eid ul-Fitr and during various Asian New Year celebrations.

### **Certain types of Council officials must not receive any gifts and benefits**

- 4.33 Council officials involved in procurement, tendering or sales activities for Council must not accept any gift or benefit from potential or current suppliers or buyers. A contract to supply goods or the opportunity to buy Council assets can be highly profitable to a supplier or buyer. Suppliers and tenderers, in some circumstances, may be tempted to influence procurement decisions by offering gifts or benefits to Council officials responsible for making procurement decisions.
- 4.34 Council officials who are designated persons or who have a financial delegation must not accept any gift or benefit.
- 4.35 The provisions of clause 4.12 of this policy apply even to the offer of any gift or benefit which is refused by Council officials who are referred to in clauses 4.31 and 4.32 above.

### **Breaches of this policy by Councillors**

- 4.36 A breach of this policy by the Mayor or any Councillor will be dealt with in accordance with Council's Code of Conduct and Code of Conduct Procedures.
- 4.37 If the matter tends to show or shows maladministration, corrupt conduct, serious and substantial waste, government information contravention or criminal activity, it will be referred by the CEO to the appropriate investigative agency.

### **Breaches of this policy by members of Council staff**

- 4.38 A breach of this policy by members of Council staff will be dealt with in accordance with any relevant staff agreements, awards, industrial agreements, contracts and Council policies, including the Code of Conduct and Code of Conduct Procedures.
- 4.39 If the matter tends to show or shows maladministration, corrupt conduct, serious and substantial waste, government information contravention or criminal activity, it will be referred by the CEO to the appropriate investigative agency.



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### AUTHORISED BY

Council (Chief Executive Officer)

### EFFECTIVE FROM

28 December 2016

### DEPARTMENT RESPONSIBLE

Corporate Services (Governance, Legal and Procurement)

### REVIEW DATE

Every two years from the date of approval of this policy

### VERSIONS

Version	Amended by	Changes made	Date	TRIM Number
1	General Manager	None	6 December 2012	268486.2012
2	Group Manager Governance by delegation (minor changes)	Changes relating to Gifts and Benefits Register, breaches of policy and form	6 May 2014	092084.2014
3	Chief Executive Officer	Changes in Council's organisational structure	15 August 2014	189961.2014
4	Chief Executive Officer	Minor changes to clause 4.27	29 February 2016	044708.2016
5	Chief Executive Officer	Minor changes to clauses 4.17 and 4.29	24 May 2016	136928.2016
6	Chief Executive Officer	New clause 4.30	28 December 2016	341927.2016

### THIS POLICY HAS BEEN DEVELOPED AFTER CONSULTATION WITH

Internal Audit

### REFERENCES

Independent Commission Against Corruption: Managing Gifts and Benefits in the Public Sector Toolkit 2006

Liverpool City Council: Code of Conduct

Liverpool City Council: Code of Conduct Procedures

Liverpool City Council: Enterprise Risk Management Policy

Liverpool City Council: Fraud and Corruption Prevention Policy

Liverpool City Council: Fraud and Corruption Prevention Plan

Liverpool City Council: Ethical Governance: Conflicts of Interest Policy

Liverpool City Council: Ethical Governance: Internal Investigations Policy

Liverpool City Council: Ethical Governance: Internal Reporting Policy

NSW Ombudsman: Good Conduct and Administrative Practice (2nd edition) 2006

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**GIFT AND BENEFIT DECLARATION FORM** TRIM 277129.2013

***For more information, please refer to the Council's Ethical Governance: Gifts and Benefits Policy and to Council's Code of Conduct***

Name of Councillor/ Member of Council staff:

Name and address (if known) of company/organisation/person offering gift or benefit:

Have you already received the gift or benefit or has it simply been offered to you or an immediate family member? *(please tick below)*

Already received ( )

Offered but not yet received ( )

Date when, and location where, this gift or benefit was offered or received:

Has this company/organisation/person offered you or an immediate family member a gift or benefit previously? YES ( ) NO ( )

If YES, please provide details of any previous gift or benefit:

To the best of your ability (if you know) please explain why this company/organisation/person offered you, or an immediate family member, this gift or benefit:

To the best of your ability please describe the nature of your relationship (or that of your immediate family member) with the company/organisation/person who has (or who is proposing to) provide the gift or benefit:

Have you, or an immediate family member previously (or is there a reasonable chance in the future):

A. Purchased, or may purchase, goods or services from the company/organisation/person?  
YES ( ) NO ( )

B. Assessed, or may access, any type of application requiring the approval of Council which has been, or may be, lodged by the company/organisation/person? YES ( ) NO ( )

C. Exercised, or may exercise, any regulatory function relating to the company/organisation/person?  
YES ( ) NO ( )

D. Otherwise dealt with, or may deal with, the company/organisation/person in circumstances where that company/organisation/person is affected, or may be affected, by any type of decision that you are required to make as a Council official now or in the future? YES ( ) NO ( )

*Note: If you have answered "YES" to any of the four questions in this section, the gift or benefit must be refused or surrendered to Council.*

*To the best of your ability please describe the gift/benefit including an estimate of value (If the gift/benefit has a value of more than \$50, it must be refused or surrendered.)*

Description of gift or benefit:

Estimated value: \$

If you have already received the gift or benefit what were the circumstances? In particular, was the gift or benefit given to you personally or was it delivered to Council premises without notice to you?

If you, or an immediate family member, has already received the gift or benefit what have you done with it? *(If you have chosen to, or are required to, surrender a gift or benefit which has already been received, please deliver it to the Governance Coordinator with this form.)*

If you have been offered the gift or benefit, how do you propose to respond?

Reported by:

*Print Name*

*Signature*

*Date*

Recommendations *(if any)* of Director *(for a Council staff member)*; CEO *(for Directors and Councillors)*; Mayor *(for CEO)*:

Signed by:

Position:

Date:

**Note:** *Any offer of cash or its equivalent or the offer of any gift or benefit in excess of \$50 in value must also be reported to and acknowledged by the CEO.*

Comments by the CEO:

Signature:

Date:

*Please return completed form to Governance Coordinator for filing and issue of copy to the reporting person.*