

Councillor Gifts

Council Policy Number	181
Date adopted	17 February 2021
Scheduled for review	February 2025



1. Preamble

This policy sets out Campaspe Shire Council's ('Council') standards and procedures for responding to offers of a gift(s), and applies to all Councillors of Campaspe Shire Council ('Councillors').

2. Purpose

To outline clear guidelines in relation to the acceptance, declaration and allocation of gifts and benefits received by Councillors. The policy aims to ensure that Councillors are not compromised in the performance of their duties by accepting gifts or benefits, which may result in a sense of obligation or could be interpreted as an attempt to influence.

3. Definitions

Benefit	<p>Gift includes "benefit" meaning something that is believed to be of value to the receiver.</p> <p>Examples of benefit include:</p> <ul style="list-style-type: none"> • Preferential treatment • Access to a sporting event • Privileged access (including access to confidential information) • Access to discount or loyalty programs • Personal services • Promise of a new job
Bribe	<p>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.</p>
Conflict of interest	<p>The <i>Local Government Act 2020</i> requires Councillors to declare General or Material Conflicts of Interest.</p> <p>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:</p> <ul style="list-style-type: none"> • 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.

Family member	<p>The <i>Local Government Act 2020</i> defines “family member” as —</p> <p>(a) a spouse or domestic partner of the relevant person; or</p> <p>(b) a parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the relevant person or of their spouse or domestic partner; or</p> <p>(c) any other relative that regularly resides with the relevant person;</p>
Gift	<p>The <i>Local Government Act 2020</i> defines “Gift” - Means 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—</p> <p>(a) the provision of a service (other than volunteer labour); and</p> <p>(b) the payment of an amount in respect of a guarantee; and</p> <p>(c) the making of a payment or contribution at a fundraising</p> <p>A gift is anything of monetary or other value that is offered by an external organisation or individual to a Councillor as a result of their role with Council. It includes free or discounted items or services, benefits or hospitality that exceeds common courtesy.</p> <p>The following constitutes a gift:</p> <ul style="list-style-type: none"> • goods and services given of a commercial value • property (real or otherwise) • transfers of money • loans of money or property • free services (tickets to events/conferences, accommodation, entertainment, sporting events etc) • goods and services made available at heavily discounted prices <p>Examples of gifts include:</p> <ul style="list-style-type: none"> • A bottle of wine or spirits • Tickets to sporting events • Gift Voucher • Corporate hospitality at a corporate facility • Discounted products for personal use • Use of a holiday home • Free or discounted travel • Free training excursions • Door prize or voucher if a Councillor has not personally paid to attend
Gift disclosure threshold	<p>A disclosable gift means any gift valued at or above \$500 or a higher prescribed amount that a relevant person received in the preceding five years if:</p> <ul style="list-style-type: none"> • the relevant person was a Councillor, member of Council staff or member of a delegated committee at the time the gift was received, or • the gift was an election campaign donation. <p>If multiple gifts are received from a person, they must be treated as a single gift with an aggregate value.</p> <p>A gift includes any good or service (other than volunteer labour) that is provided for free or at an inadequate price. It includes a payment or contribution at a fundraising function.</p>

A failure to comply is an offence that can be prosecuted in court. If found guilty a fine of up to 60 penalty units may be imposed, the value of the gift must be paid to the Council and the Councillor may be required to pay the costs of the prosecution.

Gestures

- A souvenir received from a person or company as a result of attending a seminar or conference, conducted or sponsored by them, for which an appropriate fee was paid to attend. For example ties, pens or mugs.
- Small gestures of appreciation from the community or customers such as cut flowers from their garden or homemade baked goods.
- Door prizes and raffle prizes at functions or conferences are not considered a gift if the individual has personally paid for their attendance, or when the individual has paid for the raffle ticket.

Hospitality

Hospitality is considered a gift, unless the hospitality was reasonable and received as part of attending a function or event in an official capacity as a Councillor.

- Reasonableness test: the hospitality must be of a standard and type that an independent observer would consider appropriate and not excessive.
- Official capacity test: it must clearly be your duty as a Councillor to attend the relevant function or event.

Hospitality that exceeds common courtesy includes:

- A ‘fine dining and wines’ working lunch at another organisation’s premises
- An offer to pay for a working lunch at a café
- An offer of a free spot on an industry golf day

Hospitality that does not exceed common courtesy and is therefore not a gift includes:

- Sandwiches and pastries over a lunchtime meeting
- A cup of coffee at another organisation’s premises
- A cup of coffee at a café (unless there is a conflict of interest)

Token Gift, Benefit or Hospitality

Means a gift, benefit or hospitality of inconsequential or trivial value to both the person making the offer and the recipient.

Non-token Gift, Benefit or Hospitality

Means an offer of a gift, benefit or hospitality that is, or may be perceived to be by the recipient, the person making the offer or by the wider community, of more than inconsequential value.

Value

Value means the face value or estimated retail value

4. Policy Statement

The acceptance of gifts, benefits or hospitality can involve a conflict of interest or the perception of a conflict of interest. Before accepting any gift, benefit or hospitality the Councillor must ask themselves; would it result in a sense of obligation or could it be interpreted as an attempt to influence?

4.1. Prohibited gifts

Any gift that is inconsistent with community values and could bring a Councillor’s integrity, or that of the Council, into disrepute (e.g. if accepting a gift could be perceived as an endorsement of a product or service) must be declined. Councillors must refuse the following gift offers:

a. Gift Disclosure threshold

Councillors are prohibited from accepting gifts that equal or exceed the gift disclosure threshold unless they know the name and address of the person making the gift.

b. Anonymous Gifts

Section 137 of the Local Government Act 2020 - Anonymous gift not to be accepted

- (1) *Subject to subsection (2), a Councillor must not accept, directly or indirectly, a gift for the benefit of the Councillor 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 Councillor; or*
 - (b) *at the time when the gift is made—*
 - (i) *the Councillor is given the name and address of the person making the gift; and*
 - (ii) *the Councillor reasonably believes that the name and address so given are the true name and address of the person making the gift.*

Penalty: 60 penalty units.

- (2) *If the name and address of the person making the gift are not known to the Councillor for whose benefit the gift is intended, the Councillor is not in breach of subsection (1) if the Councillor disposes of the gift to the Council within 30 days of the gift being received.*
- (3) *In addition to the penalty specified in subsection (1), a Councillor who is found guilty of a breach of that subsection must pay to the Council the amount or value of the gift accepted in contravention of that subsection.*

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

c. Conflict of Interest

Councillors are prohibited from accepting a gift that creates a conflict of interest (real, potential or perceived).

d. Money or equivalent

Councillors are prohibited from accepting gift cards (e.g. gift vouchers) or those gifts that are easily converted into money (e.g. shares).

e. Regulatory processes

Councillors are prohibited from accepting gifts from individuals or groups that may be involved with the permit application or regulatory activity (e.g. a planning permit application; infringement appeal).

f. Bequests/Wills

Any bequests to Councillors resulting from their position with Council, must not be accepted. Arrangements may be made to donate the bequest to a charitable institution in the name of the donor or returned to the donor's immediate family within 30 days of the bequest.

g. Fly buy/Frequent Flyer

Councillors are prohibited from collecting rewards for personal use via rewards programs for any Council related transactions (i.e. fly buys or frequent flyers). This relates to any claims for reimbursement of expenses incurred in accordance with the Councillor Expenses Policy.

h. Procurement & Tender Process

Councillors must not accept any gifts, benefits and hospitality from a current or prospective supplier, or any offer that is made during a procurement or tender process by a person or organisation involved in the process.

i. Consequence of accepting prohibited gifts

Accepting a prohibited gift may constitute misuse of a Councillor's position, a breach of this policy may result in a serious misconduct allegation. In addition, if the gift was offered with the expectation of something in return, such as preferential treatment, accepting it may constitute a bribe or other form of corruption and lead to criminal prosecution.

4.2. Attempts to bribe

A Councillor who receives a gift offer that they believe is an attempted bribe must refuse the offer. They must:

- Report the matter to the CEO or Public Interest Disclosure Co-ordinator (Manager Governance & Strategy) who should report any criminal or corrupt conduct to Victoria Police or the Independent Broad-based Anti-Corruption Commission.
- 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 as a public interest disclosure in accordance with Council’s Public Interest Disclosure Procedures.

4.3. No soliciting of gifts

Councillors must not solicit gifts for themselves or anyone else, in any form. To do so may constitute misuse of their position and may result in a serious misconduct allegation. It may also constitute corruption and lead to criminal prosecution.

4.4. Gestures that are not gifts

Individuals may accept gestures without approval or declaring the offer on Council’s Gifts, Benefits and Hospitality Register.

An example of a gesture is an object with no monetary value such as flowers cut from the person’s garden or homemade baked goods.

A gesture may also be a souvenir or memento received from a person or company as a result of attending a seminar or conference held, conducted or sponsored by them, for which an appropriate fee was paid to attend. An example of this is a tie, pen, cap, mug or promotional items.

Door prizes and raffle prizes at functions or conferences are not considered a gift if the Councillor has personally paid for their attendance, or when the Councillor has personally paid for the raffle ticket.

4.5. Gift offers

Accept	Councillors may <u>accept</u> token gift offers, benefits and hospitality, but all gifts accepted, must be declared and submitted to the Governance Department and included in the Gifts, Benefits and Hospitality Register. This is to ensure that the combined total value of gifts received from a single source does not exceed the prescribed disclosure threshold.
Decline	<p>Councillors should refuse gift offers that:</p> <ul style="list-style-type: none"> • Are likely to influence them, or would be perceived to influence them, in the course of their duties, • Are likely to raise a conflict of interest, whether real, potential or perceived, • Are made by a person or organisation about which they are likely to make a decision, • Are likely to be a bribe, • Have no legitimate business benefit, • Consist of money, gift vouchers or something easily converted into money, • Could be perceived to be an endorsement of a product or service and will bring the individual or Council into disrepute, • Are made in secret.

4.6. Hospitality & Conferences

Hospitality is considered a gift.

Hospitality that exceeds common courtesy must be avoided. It is inconsistent with community expectations and has a high risk of creating a conflict of interest. Examples of gift offers of hospitality that exceed common courtesy include:

- Attending as a guest in a corporate box at sporting or other events
- Attending a concert or theatre event
- Attending an industry golf day at a reduced fee
- Being ‘shouted’ a meal at a restaurant
- Accepting discounted or complimentary tickets for a family member to attend an event

Reasonable hospitality that does not exceed common courtesy does not need to be declared. Refer to the definitions of Hospitality and the reasonableness test.

Conferences

Gift offers in relation to conferences (sponsored attendance, participation, travel or accommodation) must be declined unless the invitation is issued by a government department or a Local Government affiliated peak body, such as Municipal Association of Victoria, and Rural Council’s Victoria

4.7. The G.I.F.T. Test – Conflict of Interest and reputational risks

Before accepting an offer of a gift, Councillors should first consider if the offer could be perceived as influencing them in performing their duties or lead to reputational damage. The more valuable the offer, the more likely that a conflict of interest or reputational risk exists.

The GIFT test should be used when deciding whether to accept or decline a gift, benefit or hospitality.

G	Giver	<p>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?</p>
I	Influence	<p>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 or a token of appreciation or valuable non-token offer? 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? Has the gift, benefit or hospitality been offered honestly? Has the person or organisation made several offers over the last 6-12 months? Would accepting it create an obligation to return a favour?</p>
T	Trust	<p>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?</p>

4.8. Corporate gifts

Councillors may be involved in social, cultural or community events where official gifts are presented or exchanged.

It is reasonable for Councillors in performing official duties as representatives of Council to accept official gifts on behalf of the Council, when it would appear impolite or inappropriate to decline the offer of a gift.

A letter of thanks will be prepared and sent by the Administration acknowledging the gift to Council and not the individual Councillor.

All corporate gifts received must be disclosed and recorded in the Gifts, Benefits and Hospitality Register.

The gift will be considered the property of Council, and if suitable, the gift will be displayed in an appropriate and secure location for public viewing.

4.9. Disclosure of gifts

- A Councillor must disclose any gift valued at or above the gift disclosure threshold in their Personal Interest Return (initial and bi-annual) unless the gift is from a family member.
- A Councillor who has a conflict of interest as a result of receiving a gift, or gifts, from a person must disclose the conflict of interest in accordance with the procedures outlined in Council's Governance Rules.
- Gifts above the gift disclosure threshold that are election campaign donations must be disclosed in an election campaign donation return.
- All gifts received must also be declared and disclosed in the Gifts, Benefits and Hospitality Register.

4.10. Declaration of gifts

- Councillors must complete the "Declaration of Official Gift" form within 14 days of receiving the gift (or 14 days of the date of returning to Australia if the gift was received overseas). The declaration must include:
 - A description of the gift;
 - The monetary value of the gift;
 - The name of the person who gave the gift; and
 - If the gift was given on behalf of another person or body, the name of that person or body;
- Gifts remain the property of Council until otherwise determined for disposal.

4.11. Gifts, Benefits and Hospitality Register

The Governance Department maintains the Gifts, Benefits and Hospitality Register for all gift declarations.

All gifts received will be included in the Gifts, Benefits and Hospitality Register. The Gifts, Benefits and Hospitality Register contains:

- A description of the gift and its face or estimated retail value;
- The name of the gift giver;
- What was done with the gift (was it retained by the Councillor, handed to the Council, etc.);
- Gift offers from suppliers (irregular approaches from suppliers); and
- The name of the person or body, if the gift was given on behalf of another person or body.

In accordance with Council's Public Transparency Policy, the Gifts, Benefits and Hospitality Register is available on Council's website.

Consideration will be given to maintaining reasonable confidentiality in situations where public disclosure will prejudice a proposed development or business venture, legal advice or legal proceedings.

4.12. Retention and Disposal of Gifts

All gifts are the property of Council until otherwise determined for disposal.

The Chief Executive Officer may determine to retain a gift for use at a Civic Reception or other community event.

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

- Returned to the donor;
- Transfer to other public agencies or authorities;
- Transfer as a gift to a recognised charitable aid or non-profit organisation;
- Archival action by the Victorian Museum or State Library;
- By offer to the recipient;
- Destruction; or
- By resolution of Council.

5. Exclusions

Nil

6. Human Rights

This policy has considered and complies with the Human Rights and Responsibilities contained in the Victorian Charter of *Human Rights and Responsibilities Act 2006*.

7. Related Legislation

Local Government Act 2020

8. Related Policies, Procedures and Strategies

Campaspe Shire Council's Governance Rules

Councillor Code of Conduct 2021

9. Attachments

Declaration of Official Gifts

10. Review Period

Four years

Responsible officer

Manager Governance and Strategy

11. 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 the policy, 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.

12. Approval History

Adopted 17 February 2021

Revised 19 February 2021

Revised 26 March 2021

Minute Book Reference No 177 (Item 9.6)

Administrative update to apply consistent references to Campaspe Shire Council ('Council')

Administrative update to Approval History Reference No

Chief Executive Officer:

Date: 26/3/2021



Declaration of Official Gifts

by Councillors of Campaspe Shire Council

Declarations made using this form will be held on the Gifts, Benefits and Hospitality Register maintained by the Chief Executive Officer as required by the Local Government Act 2020.

This form must be completed with 14 days of receiving the Gift, Benefit or Hospitality or, if was received overseas, within 14 days of returning to Australia.

Name:

Name of person whom gave the gift:

Was the Gift given on behalf of another Person or Body: Yes

No

If YES Name of that Person or Body:

Date Gift Received:

Gift Description:

.....

.....

Face or Estimated Retail Value:

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, including myself.

Recipient Signature: Date:

CEO Signature: Date:

Office Use Only - Gift Disposed of as Follows:

- | | |
|---|---|
| <input type="checkbox"/> Returned to the donor | <input type="checkbox"/> Archival action by the Victorian Museum or State Library |
| <input type="checkbox"/> Transfer to other public agencies or authorities | <input type="checkbox"/> Offered to the recipient |
| <input type="checkbox"/> Transfer as a gift to a recognised charitable aid or non-profit organisation | <input type="checkbox"/> Destruction |
| | <input type="checkbox"/> Resolution of Council |

Summary of CEO Decision

CEO Signature

Mr Declan Moore

Date