

Councillor and Committee Member Gifts, Benefits and Hospitality Policy

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Macedon Ranges Shire Council acknowledges the Dja Dja Wurrung, Taungurung and Wurundjeri Woi Wurrung Peoples as the Traditional Owners and Custodians of this land and waterways. Council recognises their living cultures and ongoing connection to Country and pays respect to their Elders past, present and emerging. Council also acknowledges local Aboriginal and/or Torres Strait Islander residents of Macedon Ranges for their ongoing contribution to the diverse culture of our community.

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1. Policy Objective

Section 138 of the *Local Government Act 2020 (LGA 2020)* requires Council to adopt and maintain a Councillor Gift Policy. This policy sets out the minimum standards for elected Councillors in the management of gifts, benefits and hospitality and the procedure for the maintenance of a Gift Register.

The purpose of this policy is to establish a clear policy position for Macedon Ranges Shire Councillors, members of Council's delegated committees; and members of Council's Audit and Risk Committee in relation to gifts, benefits and hospitality. It supports those individuals in avoiding conflicts of interest and maintaining high levels of integrity, accountability and public trust.

This policy:

- provides clear direction and guidance to Councillors, members of Council's delegated committees; and members of Council's Audit and Risk Committee in relation to the acceptance or refusal of gifts, benefits and hospitality.
- ensures that members of the Macedon Ranges Shire community and other key stakeholders can trust that Councillors, members of Council's delegated committees; and members of Council's Audit and Risk Committee will not place their personal interests over their public duties when carrying out their official duties and functions.

Acting in accordance with this policy will ensure that Councillors are not compromised in the performance of their duties by accepting gifts, benefits or hospitality that may result in a sense of obligation or which could be interpreted as an attempt to influence. This helps to protect and promote public confidence in the integrity of Council.

2. Scope and Background

2.1. Background

Macedon Ranges Shire Council is subject to the Local Government Act 2020 (LGA 2020). The LGA 2020 establishes a legislative framework that provides for councils to be accountable to their local communities in the performance of functions, exercise of powers and use of resources.

Section 138 of the LGA 2020 requires councils to adopt, review and update a Councillor gift policy.

2.2. Scope

This policy applies to all Councillors of Macedon Ranges Shire Council; all members of Council's delegated committees; and members of Council's Audit and Risk Committee. References to Councillors in this policy should be read as including members of Council's delegated committees and Council's Audit and Risk Committee.

3. Key Principles and Accountabilities

The four key principles and accountabilities underpin this policy.:

3.1. Impartiality

Councillors have a duty to place the public interest above their private interests when carrying out their official functions and duties. Councillors will not accept offers from those about whom they are likely to make Council decisions.

3.2. Accountability

Councillors are held accountable to the community in relation to gifts, benefits and hospitality through the declaration of all non-token offers of gifts, benefits and hospitality. Council's gift register is publicly available.

3.3. Integrity

Councillors strive to earn and sustain public trust through providing or responding to offers of gifts, benefits and hospitality in a manner that is consistent with community expectations. Councillors will refuse any offer that may lead to an actual, perceived or potential bias or conflict of interest.

3.4. Risk-based approach

The Council, through its policies and processes will ensure gifts, benefits and hospitality risks are appropriately assessed and managed.

4. Definitions

The following terms used in this policy have the following meanings:

Term	Definition
Anonymous gifts	Any gift received by the Councillor, where the name and address of the person making the gift cannot be established.
Associate	<p>An associate of a Councillor is any of the following:</p> <ul style="list-style-type: none">• a spouse or domestic partner of the Councillor.• a person who has or has had an intimate personal relationship with the Councillor.• a friend of a Councillor.• a person who a reasonable person would consider to be the relative of a Councillor, including but not limited to grandparents, parents, children, siblings, aunts, uncles, nieces and nephews.• a business partner of a Councillor.• a person, including an entity, with which the Councillor has an employer/employee relationship of any kind.
Benefits	<p>Benefits are things of an incalculable value that are nonetheless attractive. Examples include:</p> <ul style="list-style-type: none">• Preferential treatment.• Privileged access.• Access to discount or loyalty programs.• Promises of a new job or future work as a consultant.

Term	Definition
Bribes	<p>Bribes are offers of money or other inducements made with the intention of influencing a Councillor in the performance of their duties.</p> <p>Bribery or attempted bribery of a public official is a criminal offence.</p>
Ceremonial gifts	<p>Ceremonial gifts are official gifts provided as part of the culture and practices of communities and government, within Australia or internationally. Ceremonial gifts are usually provided when conducting business with official delegates or representatives from another organisation or community.</p> <p>Ceremonial gifts are the property of Council, irrespective of value, and should be accepted by individuals on behalf of Council.</p>
Conflict of interest	<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 (both material and general) and is defined in part 6 Division 2 of <i>LGA 2020</i></p>
Disclosable gift	<p>As defined in section 128(4) of <i>LGA 2020</i> the term "<i>disclosable gift</i>" means one or more gifts with a total value of more than \$500 (or any other amount prescribed by the regulations) received from a person in the five years preceding the decision on a matter.</p>
Gestures	<p>Gestures are very small gestures of appreciation or thanks of no value or almost no value. Examples include:</p> <ul style="list-style-type: none"> • Thank you cards. • Souvenirs received at a seminar or conference, such as pens and mugs. • Very small gestures of appreciation from the community or customers such as cut flowers or homemade baked goods.
Gift	<p>Section 3 of the <i>LGA 2020</i> defines the term "gift" as:</p>

Term	Definition
	<p><i>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—</i></p> <p><i>(a) the provision of a service (other than volunteer labour); and</i></p> <p><i>(b) the payment of an amount in respect of a guarantee; and</i></p> <p><i>(c) the making of a payment or contribution at a fundraising function;</i></p> <p>A broad range of free or discounted items and services are covered by this definition of “gift”.</p> <p>Section 3 of the LGA 2020 includes the full definition of “disposition of property”.</p>
Gifts, Benefits and Hospitality Form	Council has a form for declaring the offers / receipt of gifts, benefits and hospitality. The form and the method of submission may be revised from time to time.
Gift disclosure threshold	The gift disclosure threshold is defined in Section 3 of the LGA 2020
Councillor Gift Register	Council’s Councillor Gifts, Benefits and Hospitality Register.
Hospitality	Hospitality is the welcoming reception and entertainment of guests. This definition covers hospitality ranging from light refreshments at business meetings to expensive restaurant meals and sponsored travel and accommodation.
Value	Value means the face value or estimated retail value.

5. The “GIFT” Test

In deciding whether to accept an offer, 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 was developed by the Victorian Public Sector Commission and is a useful tool in deciding whether to accept or decline a gift.

Councillors must consider the following:

- **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?
- **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 or a token of appreciation or valuable non- token offer? Does its timing coincide with a decision I am about to make?
- **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?
- **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?

6. Action required

Councillors are required to take specific actions to appropriately manage their obligations pursuant to different kinds of gifts, benefits and hospitality. These are outlined in the Gifts, Benefits and Hospitality process document. In all cases the Councillor must submit a completed Council Gifts, Benefits and Hospitality form to the Governance team.

Any Councillor who believes they or another Councillor has been offered a bribe must refuse the offer and report the matter to the Chief Executive Officer of the Public Interest Disclosure Coordinator immediately. If the Councillor reporting was the intended recipient of the bribe they must also submit Council's Gifts, Benefits and Hospitality form as a matter of urgency, but no later than 48 hours after the offer or receipt of the bribe

7. Indirect Gifts

If a gift (with the exception of a token gift), benefit or hospitality is offered to an associate of a Councillor and a reasonable person would believe that it was offered because of that associate's relationship with a Councillor, the Councillor must:

- declare the gift, benefit or hospitality (even if declined).
- take all reasonable steps to ensure that the gift, benefit or hospitality is declined or returned by their associate.

8. General Prohibitions

Despite anything else in this policy and regardless of value, Councillors must refuse offers:

1. of money, or of items used in a similar way to money, or something easily converted to money (such as gift cards).
2. to voluntarily opt-in to collect rewards for personal use via a rewards program for any Council-related transactions, such as frequent flyer points available to be earned on a flight for Council purposes (transactions where rewards are automatically earned are exempt).
3. that are likely to influence them, or be perceived to influence them, in the course of their duties or that raise an actual, potential or perceived conflict of interest.
4. that are made by a person or organisation about which they will likely make or influence a decision, including in relation to grants, sponsorship, regulation, enforcement or licensing, particularly offers:
 - a) made by a current or prospective supplier.
 - b) made during a procurement or tender process by a person or organisation involved in that process.

- c) that are likely to be a bribe or inducement to make a decision or act in a particular way.
- 5. where acceptance could be perceived as endorsement of a product or service, or acceptance would unfairly advantage the sponsor in future procurement decisions.
- 6. of a gift that is of a kind that is inconsistent with community values for the public service (such as cigarettes or cigars).
- 7. that are made by a person or organisation with a primary purpose to lobby Council.
- 8. that are made in secret.
- 9. of gifts from any individual or group that may have any involvement with any planning permit application or other planning matter.
- 10. are made by a person or organisation about which they will likely make a decision.
- 11. are likely to be a bribe.
- 12. of bequests in wills to Councillors resulting from their position with Council.

9. Breach of this Policy

A breach of this policy constitutes a breach of the Councillor Code of Conduct. The LGA 2020 provides that “any breach by a Councillor of the prescribed standards of conduct included in the Councillor code of Conduct” constitutes misconduct (see section 3). Councillors can raise conduct-related matters under the Councillor Code of Conduct.

Continued or repeated contravention misconduct may constitute serious misconduct. Allegations of serious misconduct are managed under the LGA 2020 section 154.

Councillors are required to ensure that they do not misuse their position as a councillor to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person. Misuse of position is a serious criminal offence under section 123 of the LGA 2020.

10. The Councillor Gift Register

Where indicated in this policy, Councillors must submit a completed Gifts, Benefits and Hospitality Form in alignment with the Gifts, Benefits and Hospitality Procedure document.

A Councillor Gift Register will be maintained which records all gifts (with the exception of gestures) with the following information:

- the Individuals name.
- the date on which the gift, benefit or hospitality was received/declined.
- the name of the individual/organisation providing/offering the gift.
- a description of the gift and the approximate value
- the action taken in relation to the gift.

A Councillor Gift Register will be maintained by the Governance Team for duration of each term of Council, published on Council's website and updated on a quarterly basis.

11. Disclosure requirements

In addition to the requirements in this policy to disclose gifts by way of submitting Council's Gifts, Benefits and Hospitality form, Councillors have other disclosure requirements in relation to gifts, benefits and hospitality, namely:

- a Councillor must disclose any gift valued at \$500 or more in their biannual personal interest return 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 the Governance Rules.
- gifts above the gift disclosure threshold that are election campaign donations must be disclosed in an election campaign donation return.

12. Further Information

Councillors who are unsure about the acceptance of a gift, benefit or hospitality, or the application of this policy, should speak with the Chief Executive Officer or the Coordinator Governance and Information.

Gender Impact Assessment

In accordance with the *Gender Equality Act 2020*, a Gender Impact Assessment was not required in relation to the subject matter of this report.

References

- > The Resource Suite of the Victorian Public Sector Commission in relation to gifts, benefit and hospitality.
- > Recommendations from the 2019 review by the Independent Broad-based Anti-corruption Commission into Local Government Integrity Frameworks.
- > Conflicts of Interest in Local Government – published by the Victorian Ombudsman in 2008.

Related Policies

- > Councillor Code of Conduct
- > Councillor Support and Expenses Policy
- > Fraud Management Policy
- > Public Interest Disclosures Policy and Procedure

Related Legislation

- > *Local Government Act 2020*
- > *Local Government (Governance and Integrity) Regulations 2020*

Related Procedures

- > Councillor and Committee Member Gifts, Benefits and Hospitality Procedure