



DOCUMENT HISTORY	Version	Date	Author
Initial Draft			
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Final Draft			
Approval			

	operation. It came into operation on 24 October 2020 so Council must adopt a councillor gift policy by 24 April 2021.
References:	<p>Resources used in the preparation of this policy include:</p> <ul style="list-style-type: none"> • 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. • <i>Conflicts of Interest in Local Government</i> – published by the Victorian Ombudsman in 2008.
Related Policies:	<p>Councillor Code of Conduct Councillor Support and Expenses Policy Fraud Management Policy Public Interest Disclosures Policy and Procedure</p>
Related Legislation:	<p>Local Government Act 2020 Local Government (Governance and Integrity) Regulations 2020</p>

1. POLICY OBJECTIVE

The purpose of this policy is to establish a clear policy position for Macedon Ranges Shire Councillors in relation to gifts, benefits and hospitality. It supports Councillors in avoiding conflicts of interest and maintaining high levels of integrity, accountability and public trust.

This policy:

- provides clear direction and guidance to Councillors 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 will not place their personal interests over their public duties when carrying out their official duties and functions
- fulfils the requirement in the *Local Government Act 2020* (LGA 2020) for councils to adopt a councillor gift policy within six months of the commencement of section 139 of the LGA 2020.

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

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

3. KEY PRINCIPLES AND ACCOUNTABILITIES

The key principles are:

- 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.
- 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.
- 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.
- 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	MEANING
Anonymous gifts	A gift is an anonymous gift unless: <ul style="list-style-type: none">• the name and address of the person making the gift are known to the Councillor; or• at the time the gift is made:

TERM	MEANING
	<ul style="list-style-type: none"> ○ the Councillor is given the name and address of the person making the gift; and ○ the Councillor reasonably believes that the name and address given are the true name and address of the person making the gift.
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
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>
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>

TERM	MEANING
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 financial and non-financial). Conflicts may be:</p> <ul style="list-style-type: none"> • real – one actually exists, or • potential – one 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.
Disclosable gift	<p>The term "disclosable gift" 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> <ul style="list-style-type: none"> • at the time the gift was received; or • if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation <p>but does not include the value of any reasonable hospitality received by the Councillor at an event or function that the Councillor attends in their official capacity. The definition of disclosable gift is in section 128(4) of the LGA 2020.</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 from a home garden or homemade baked goods
Gift	<p>Section 3 of the LGA 2020 defines the term "gift" as the disposition of property (other than by will) that is made to one person by another person:</p>

TERM	MEANING
	<ul style="list-style-type: none"> • without any consideration (a payment or benefit in return — quid pro quo); or • with inadequate consideration (a correspondingly valuable payment or benefit being provided in return). <p>A broad range of free or discounted items and services are covered by this definition of “gift”, including but not limited to:</p> <ul style="list-style-type: none"> • Bottles of wine or spirits • Christmas hampers • Flower arrangements • Boxes of chocolates • Tickets to sporting events • Gift vouchers • Corporate hospitality at a corporate facility • Discounted products for personal use • Use of a holiday home • Free or discounted travel • Door prizes or vouchers if an individual has not personally paid to attend • Payments or contributions to fundraising • Commemorative objects • Lawn mowing, car washing and similar services • The payment of an amount in respect of a guarantee <p>Councillors should refer to section 3 of the LGA 2020 for the full definition of “gift” and the related definition of “disposition of property”.</p>
Gifts, Benefits and Hospitality Form	<p>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.</p>

TERM	MEANING
Gift disclosure threshold	The gift disclosure threshold is \$500 or any higher amount prescribed by the regulations from time to time.
Gift Register	Council's 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:

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? 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?</p> <p>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?</p> <p>Has the gift, benefit or hospitality been offered honestly? Has the</p>

		<p>person or organisation made several offers over 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 the public view acceptance of this gift, benefit or hospitality?</p> <p>What would my colleagues, family, friends or associates think?</p>

6. ACTION REQUIRED

The following table sets out the action required of Councillors in relation to different kinds of gifts, benefits and hospitality. It should be read in conjunction with the rest of this policy.

ITEM	ACTION REQUIRED
Benefits	<p>Offers of benefits should be declined. Council's Gifts, Benefits and Hospitality Form must be completed and submitted to the Governance team within seven days of the offer of the benefit.</p>
Bribes	<p>A Councillor who receives or is offered a gift, benefit or hospitality that they believe is an attempted bribe must refuse the offer. They must:</p> <ul style="list-style-type: none"> • report the matter to the Chief Executive Officer or Public Interest Disclosure Coordinator (Manager Legal and Corporate Governance) • 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. <p>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 Chief Executive Officer or report the matter as a public interest disclosure to the Public Interest Disclosure Coordinator in accordance with Council's Public Interest Disclosure Policy and Procedure.</p> <p>The Chief Executive Officer will report all credible reports of bribes and attempted bribes to Victoria Police. Councillors can also report bribes and attempted bribes to Victoria Police. The Chief Executive Officer is required by law, and will, notify the Independent Broad-based Anti-</p>

ITEM	ACTION REQUIRED
	corruption of any matter where they suspect on reasonable grounds that corrupt conduct has occurred or is occurring.
Conference expenses	<p>Offers of hospitality, benefits or gifts ancillary to conferences (such as sponsored attendance, participation, travel or accommodation) must be declined unless there is:</p> <ul style="list-style-type: none"> • clear justification for the offer, such as where an invitation to be a presenter at an interstate conference is issued by a government department or a peak body, and • prior written approval from the Chief Executive Officer. <p>If the Chief Executive Officer grants approval, the written approval must be attached to the Gifts, Benefits and Hospitality form which must be submitted to the Governance team within seven days of the approval.</p>
Ceremonial gifts	Councillors may accept ceremonial gifts on behalf of Council, irrespective of their value. Council's Gifts, Benefits and Hospitality Form must be completed and submitted to the Governance team within seven days of receipt of the gift. Ceremonial gifts are the property of Macedon Ranges Shire Council.
Gifts valued at under \$50 (token gifts)	<p>Councillors may accept gifts valued at under \$50. Regardless of whether the gift is accepted or declined, Council's Gifts, Benefits and Hospitality Form must be completed and submitted to the Governance team within seven days of the offer of the gift.</p> <p>While such gifts may be accepted, Councillors should note that receipt of multiple small gifts from the same person or entity may cause them to have a material conflict of interest in relation to a matter if the giver would gain a benefit or suffer a loss depending on the outcome of the matter (section 128 of the LGA 2020). This can arise where the aggregation of the value of these gifts over time causes them to become a disclosable gift (see definition above). Notwithstanding the aggregation principle outlined above, Councillors should note the acceptance of any single gift under \$50 could create a perception of a conflict even though one may not exist, and as such should refer to the GIFT principles above when accepting any gift under \$50.</p>

ITEM	ACTION REQUIRED
<p>Gifts valued at over \$50 but under \$500 (or higher prescribed amount) that are from a person known to the Councillor</p>	<p>Councillors must refuse gifts with a value that exceeds \$50 unless the gift falls into another category, such as ceremonial gifts, that permits acceptance. In the very limited circumstances in which a gift valued at over \$50 cannot reasonably be refused (such as when it is presented on stage at an official ceremony), the gift can be accepted, but it becomes the property of Council and must be delivered to the Office of the Chief Executive Officer within seven days of receipt. Regardless of whether the gift is accepted or declined, Council's Gifts, Benefits and Hospitality Form must be completed and submitted to the Governance team within seven days of receipt of the gift.</p>
<p>Gifts which are anonymous gifts which have a value equal to or exceeding the gift disclosure threshold (\$500 or higher prescribed amount)</p>	<p>It is an offence under section 137 of the LGA 2020 for councillors to directly or indirectly accept anonymous gifts with a value equal to or exceeding the gift disclosure threshold (\$500 or a higher prescribed amount). They must be refused. Contravention of section 137 is punishable by a fine of up to 60 penalty units. If for any reason a Councillor finds themselves in possession such a gift, the Councillor will not commit an offence provided that the Councillor gives the gift to Council within 30 days of receipt. The gift should be delivered to the Office of the Chief Executive Officer and Council's Gifts, Benefits and Hospitality form must be completed and submitted to the Governance team within seven days of receipt of the gift.</p>
<p>Gestures</p>	<p>Councillors may accept or decline gestures based on the application of the "GIFTS" test and are not required to declare gestures. If a Councillor is in any doubt as to whether something is gesture or a gift, Council's Gifts, Benefits and Hospitality Form should be completed and submitted to the Governance team within seven days of the offer/receipt.</p>
<p>Hospitality</p>	<p>Hospitality:</p> <ul style="list-style-type: none"> • can be accepted if the hospitality is reasonable and if the Councillor is receiving the hospitality in an official Council capacity. Hospitality will only be considered reasonable when it is of a standard and type that a reasonable and independent observer would consider appropriate and not excessive. Examples of hospitality which is excessive include:

ITEM	ACTION REQUIRED
	<ul style="list-style-type: none"> ○ Attending as a guest in a corporate box at the football or races ○ 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 the tennis. <p>For attendance to be in an official capacity, it must clearly be part of a Councillor's role to attend the relevant function or event. Councillors' attendance at functions and events in their capacity as councillors is managed by the Executive Office.</p> <p>An example of hospitality that can be accepted is a light lunch provided in a meeting or seminar. Reasonable hospitality does not need to be declared.</p> <ul style="list-style-type: none"> • must be declined if the hospitality is not reasonable and/or if the Councillor would not be attending in their official capacity but has been invited by reason of their status as a Councillor. If offers of hospitality of this sort are received, Council's Gifts, Benefits and Hospitality Form must be completed and submitted to the Governance team within seven days of receipt of the offer even if the hospitality is declined.

7. INDIRECT GIFTS

There may be times when gifts, benefits and hospitality are offered to an associate of a Councillor because of that associate's relationship with that Councillor. 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:

- of money, or of items used in a similar way to money, or something easily converted to money (such as gift cards)
- to collect rewards for personal use via a rewards programs for any Council-related transactions, such as frequent flyer points available to be earned on a flight for Council purposes
- 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
- 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:
 - made by a current or prospective supplier
 - made during a procurement or tender process by a person or organisation involved in that process
 - that are likely to be a bribe or inducement to make a decision or act in a particular way
- where acceptance could be perceived as endorsement of a product or service, or acceptance would unfairly advantage the sponsor in future procurement decisions
- of a gift that is of a kind that is inconsistent with community values for the public service (such as cigarettes or cigars)
- that are made by a person or organisation with a primary purpose to lobby Council
- that are made in secret
- of gifts from any individual or group that may have any involvement with any planning permit application or other planning matter
- are made by a person or organisation about which they will likely to make a decision
- are likely to be a bribe
- 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 Part 14 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 Part 16 of the Councillor Code of Conduct.

Repeated contravention of this policy constitutes a repeated contravention of Part 14 of the Councillor Code of Conduct. In some circumstances, continued or repeated contravention misconduct constitute serious misconduct. Allegations of serious misconduct can be made to a Councillor Conduct Panel which may impose a range of sanctions including the suspension of a Councillor from office for a period not exceeding 12 months.

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 and is punishable by the imposition of 600 penalty units or imprisonment for five years. Councillors must never solicit gifts for themselves or anyone else in any form.

10. THE GIFT REGISTER

Where indicated in this policy, Councillors must submit a completed Gifts, Benefits and Hospitality Form to the Governance Unit within the timeframe specified (usually within seven days).

The Office of the Chief Executive Officer will maintain a Gift Register which records all gifts (with the exception of gestures) with the following information:

- the Councillor's 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
- the approximate value of the gift
- the action taken in relation to the gift

The Gift Register will be published on Council's website and updated on a monthly 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 Manager Legal and Corporate Governance.