

Nillumbik Shire Council

Councillor Gift Policy

Description of policy	The Councillor Gift Policy formalises the minimum standards in relation to offers of gifts, benefits and hospitality.
Policy applies to	<input type="checkbox"/> All Councillors
Version Number	1
Approved by	Council Resolution
Approval date	23 March 2021
Effective date	23 March 2021
Date of last revision	
Date of next review*	March 2023

*Unless replaced, this policy will still apply beyond the review date.

Related internal procedures and guidelines	<ul style="list-style-type: none">• Governance Rule – Procedure for Disclosure of Conflict of Interests
Related policies	<ul style="list-style-type: none">• Council Expenses Policy• Councillor Code of Conduct
Related legislation, standards and guidelines	<ul style="list-style-type: none">• <i>Local Government Act 2020</i>• <i>Equal Opportunity Act 2010</i>• <i>Charter of Human Rights and Responsibilities Act 2006</i>• <i>Public Interest Disclosures Act 2012</i>• Local Government (Governance and Integrity) Regulations 2020

1. Purpose

Section 138 of the *Local Government Act 2020* (**the Act**) 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.

This Policy supports the overarching governance principles specified in section 9(2) of the *Local Government Act 2020*. It also supports compliance with Part 6 – Council Integrity Division 1 sections 1-5 (inclusive) of the Act and Council's Good Governance Decision - Making Policy.

2. Objectives

The objective of Council's 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:

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

3. Definitions

Reference term	Definition
Business associate	An individual or body that Council has, or plans to establish, some form of business relationship with, or who may seek commercial or other advantage by offering gifts, benefits or hospitality.
Benefits	Benefits include preferential treatment, privileged access, favours or other advantage offered to an individual. They may include invitations to sporting, cultural or social events, access to discounts and loyalty programs and promises of a new job. The value of benefits may be difficult to define in dollars, but as they are valued by the individual, they may be used to influence the individual's behaviour.
Ceremonial gifts	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, community or foreign government. Ceremonial gifts are the property of Council, irrespective of value, and should be accepted by individuals on behalf of Council.

Reference term	Definition
Conflict of interest	<p>Conflicts may be:</p> <p>Actual: There is a real conflict between an employee's public duties and private interests.</p> <p>Potential: An employee has private interests that could conflict with their public duties. This refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk.</p> <p>Perceived: The public or a third party could reasonably form the view that an employee's private interests could improperly influence their decisions or actions, now or in the future.</p>
Disclosable gift	<p>As defined in section 128(4) of the Act.</p> <p>A gift of, or of more than \$500 or an amount received from a person in the five years preceding.</p>
Gifts	<p>Gifts are free or discounted items or services and any item or service that would generally be seen by the public as a gift. These include items of high value (e.g. artwork, jewellery, or expensive pens), low value (e.g. small bunch of flowers), consumables (e.g. chocolates) and services (e.g. painting and repairs). Fundraising by Council that is consistent with relevant legislation and any government policy is not prohibited under the minimum accountabilities.</p>
Gift disclosure threshold	<p>The Act definition:</p> <p>gift disclosure threshold means—</p> <p>in the case of a Council, other than the Melbourne City Council, \$500 or a higher amount or value prescribed by the regulations;</p>
Hospitality	<p>Hospitality is the friendly reception and entertainment of guests. Hospitality may range from light refreshments at a business meeting to expensive restaurant meals and sponsored travel and accommodation.</p>
Token offer	<p>A token offer is a gift, benefit or hospitality that is of inconsequential or trivial value to both the person making the offer and the recipient (such as basic courtesies). Token offers cannot be worth more than \$50.</p>
Non-token offer	<p>A non-token offer is 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. All offers worth more than \$50 are non-token offers and must be recorded on the Councillor Gift, Benefit and Hospitality register</p>

4. Policy Principles

- 4.1. This policy should not override or be inconsistent with any Act or Regulation. In the event of any inconsistency, the provisions within the legislation will apply.
- 4.2. A Councillor should not use their position to seek, solicit to obtain gifts, benefits or hospitality for personal gain to themselves or others.
- 4.3. A Councillor must ensure to the best of their abilities that external persons, companies and organisations do not offer gifts, benefits or hospitality believing that they will receive preferential treatment by the Councillor and/or Council.
- 4.4. Monetary gifts should not to be accepted regardless of value.
(Election donations are excluded. For information on election donations, refer to sections 306 and 309 of the Act.)

- 4.5. Anonymous gifts not to be accepted

Section 137 of the Act

- (1) 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.
- (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.

- 4.6. Other offers to be declined (non-exhaustive list):

- Any single gift exceeding \$250.00;
- Access to confidential information or information that is not generally available to the broader community; or
- Any gift whereby the Councillor obtains a personal, financial or professional advantage.

- 4.7. Token Offer

An offer of a nominal or token value which may include (non-exhaustive list):

- Marketing and corporate gifts such as pens, notepads, diaries, chocolates or single bottles of alcohol (within token offer threshold);
- Flowers and chocolates; or
- Invitations to events (within token offer threshold).

4.8. Non-token offer

A non-token offer or a gift of value may include;

- Invitations to sporting events and/or corporate box tickets;
- Memberships;
- Training sessions;
- Any gift with a value of more than \$50;
- A gift normally considered a token offer but with a cumulative total of more than \$50 over a period of 12 Months; or
- Gifts with a single or cumulative total of more than \$500 over a five year period become a disclosable gift as defined in section 128(4) of the Act.

4.9. Official or Ceremonial gifts

From time to time a Councillor may be presented with a goodwill gift to Council for example a gift of artwork, a gift of historical, community or cultural significance or a ceremonial gift to the Shire.

Where appropriate, and where the acceptance of the gift does give benefit to the benefactor, or cause a conflict of interest to the Councillor or Council, whether actual, potential or perceived, the gift may be accepted. An official gift to Council, will be recorded in the Corporate Gift Register and remain the property of Council.

4.10. Exemptions from disclosure under this policy:

- Election donations;
- Hospitality or ticket costs where the Councillor has attended in an official capacity representing Council;
- Attendance at events that were free of charge to the broader community, or where the Council or Councillor has funded their attendance;

5. Gift disclosure

5.1. Non-token offers should where appropriate be politely declined.

5.2. A situation where it is deemed inappropriate to decline a gift, benefit or hospitality, or where refusal is likely to cause embarrassment to Council or the Councillor, the gift, benefit or hospitality may be accepted.

5.3. Prior to accepting any offer of a gift, benefit or hospitality, a Councillor should assess and determine that the offer is not likely to cause themselves or Council an actual, potential or perceived conflict of interest. An offer of a gift, benefit or hospitality that is reasonably likely to cause Council or the Councillor a conflict of interest immediately or in the future must be declined. Consideration should also be given by the Councillor regarding the gift disclosure threshold as defined by the Act.

5.4. All offers of a gift, benefit or hospitality whether accepted, declined or returned must be recorded in the Councillor Gift, Benefit and Hospitality Register using the Gift, Benefit or Hospitality declaration form (**Appendix 1**).

- 5.5. All offers of a gift, benefit or hospitality with a value of more than \$50 or with a cumulative total of more than \$50 over a period of 12 months, whether accepted, declined or returned will be recorded in the Councillor Gift, Benefit and Hospitality Register which will be made available on Council's website.
- 5.6. Any individual offering a gift must be advised that their name and details of the gift will be recorded in the Councillor Gift, Benefit and Hospitality Register and will be made publicly available for inspection and online in accordance with this policy.
- 5.7. Councillors are responsible to ensure they record any disclosable gifts on their Biannual Personal Interests Return form.

6. Procedure

- 6.1. Within 7 days of an offer of a gift, benefit or hospitality, the Councillor should complete the Gift, Benefit or Hospitality declaration form and submit to governance@nillumbik.vic.gov.au.
- 6.2. Governance will maintain a register of all declarations deemed to be token gifts. In the event that a Councillor receives more than one token gift from the same person or organisation within a 12 month period with a cumulative total of more than \$50, these declarations will be transferred to the Councillor Gift, Benefit and Hospitality Register.
- 6.3. The Councillor Gift, Benefit and Hospitality Register will be updated by Governance on a receipt of the Gift, Benefit or Hospitality declaration form.

GIFT, BENEFIT AND HOSPITALITY DECLARATION FORM

This declaration form supports Nillumbik Shire Council's Councillor Gift Policy. Councillors must declare all offers of gifts, benefits and hospitality (whether accepted, returned or declined).

Fields marked in orange will be published online in the organisation's Corporate Gift Register

Individual to complete	
1. Declaration date	
2. Name (recipient)	
3. Position	
Details of the gift, benefit or hospitality	
4. Date offered	
5. Describe the gift, benefit or hospitality offered	
6. Estimated or actual value	
7. Name of person OR organisation (donor) making the offer. <i>Names will be published.</i>	
8. Is the person or organisation making the offer a business associate of Council (Yes / No)?	
9. If yes , describe the relationship between them and Council. If no , describe the relationship between you and the person or organisation making the offer; for example, a personal relationship	
10. Why is the offer being made?	
11. Would accepting the offer create an actual, potential or perceived conflict of interest (Yes / No)? If yes , then the offer must be declined in accordance with the minimum accountabilities	

Individual to complete	
<p>12. Would accepting the offer bring you, or Council into disrepute (Yes / No)?</p> <p>If yes, then the offer must be declined in accordance with the minimum accountabilities</p>	
<p>13. Is there a legitimate business benefit to Council for accepting the offer? (Yes / No)</p> <p>For example:</p> <ul style="list-style-type: none"> a) Was it offered during the course of your official duties? b) Does it relate to your official responsibilities? c) Does it have a benefit to the organisation, public sector or State? <p>If no, then the offer must be declined</p> <p>If yes, then the business benefit must be detailed, in accordance with the minimum accountabilities</p>	
<p>14. Is the offer an official or ceremonial gift provided when conducting business with official delegates or representatives from:</p> <ul style="list-style-type: none"> a) another Council or organisation; b) the community; or c) a foreign government? (Yes / No) <p>If yes, please provide details</p>	
<p>15. Was the offer accepted, refused, returned or became the property of Nillumbik Shire Council?</p>	
<p>16. Signature</p>	