

## Upper Macquarie County Council

### **POLICY: UMCC\_2018/04**

#### **Gifts & Benefits Policy**

#### ***Avoiding actual and perceived corrupt conduct by Council officials in relation to gifts and benefits.***

Adopted by: Upper Macquarie County Council  
Review Date: Every 3 years or as required

Date: 3<sup>rd</sup> August 2018  
Next Due: 3<sup>rd</sup> August 2021

Policy Document Approved by:

*David Young*

David Young  
General Manager

Date: 10<sup>th</sup> July 2018

## 1. Policy Purpose

Upper Macquarie County Council (the Council) recognises that a person in carrying out their role as Councillor, staff member or council agent may from time to time, be offered gifts to establish an amicable initial business relationship, to display appreciation or demonstrate good faith in an ongoing business relationship.

The acceptance of such gifts or other benefit has the potential to compromise the position of a Councillor or staff member or council agent by creating a sense of obligation in them and so undermining their impartiality. The acceptance of a gift can also affect the public's perception of the integrity and independence of the Council and its employees.

Accordingly the Council seeks to provide clear guidance for Councillors and staff members to enable them to deal with any offer of a gift or benefit; protect them from being compromised; and demonstrate that all matters will be dealt with in an impartial, transparent and accountable manner - without the public perception of bias.

This Policy seeks to ensure that the provisions of Clause 184 of the Local Government Regulation (2015) and Part 5 'personal benefit' of the NSW Model Code of Conduct for Local Councils (as adopted by Council as the Council's Code of Conduct) is properly implemented.

## 2. Scope of Policy

This policy applies to all Councillor members of the Council; all staff employed by the Council; and as applicable any agent of the Council.

Councillors, staff and agents must comply at all times with this policy and Council Code of Conduct.

For the purposes of this policy, reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation.

## 3. Policy Statement

It is Council Policy that Councillors, Staff and agents of the Council will preferably not accept any gifts or benefits, however if circumstances prevent this then all offers of gifts or benefits will be managed strictly in accordance with the obligations set out in Council's Code of Conduct, and this policy.

Without exception, no Councillors, Staff or agents of the Council is permitted to:-

- (a) Seek or accept a bribe or other improper inducement; OR
- (b) By virtue of your position acquire a personal profit or advantage, real or perceived, which has a monetary value; OR
- (c) Seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably perceived by an impartial observer as intended or likely to influence you to:
  - a. Act in a particular way or make a particular decision; OR
  - b. Fail to act in a particular circumstance; OR
  - c. Otherwise deviate from the p[roper exercise of your official duty or responsibility.

At all times Councillors, Staff and agents of the Council must:

- (a) Avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favorable treatment from you or from the Council; AND
- (b) Take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favorable treatment through you.

## 4. Implementation Procedure

There is an obligation for Councillors, Staff and agents to disclose all instances where:-

- (a) Gifts or benefits have been accepted and
- (b) Gifts or benefits have been offered.

The disclosure responsibility rests with the individual Councillor, staff member or agent of Council in accordance with this section.

A Councillor, staff member or agent must complete, the 'hardcopy' declaration form (available by request from [admin@umcc.nsw.gov.au](mailto:admin@umcc.nsw.gov.au) ) for receipt of or offer of, a gift or benefit, and submit the declaration form to the General Manager within two (2) weeks of accepting or receiving the offer. A sample form is provided herein as **Appendix 2**.

A Councillor, staff member or agent of Council, who has prior notice of the receipt of a gift or benefit – such as hospitality and attendance at an event - should receive prior written approval to accept where possible. For Councillors from the Chairman. For staff or agents of from the General Manager.

The General Manager will establish and maintain a Gifts and Benefits Register. The General Manager must sign/date each declaration form presented, and the Administration Officer will scan the completed document and process the information into the councils Gifts and Benefits Register.

## 5. Implementation Guidance

The acceptance of gifts or benefits will always be a potential problem for Councillors, Staff and agents. Deciding where to draw the line between the proper and improper acceptance of gifts or benefits can be difficult.

Councillors, Staff and agents should note that it is never appropriate to accept or be offered a gift or other benefit in the course of a council business relationship involving the procurement or provision of goods and service. In this setting such gift or benefit can only be, perceived as intended for commercial advantage - such as to create a feeling of obligation on the part of the recipient. This is normally described as a 'bribe' and is usually criminal corrupt conduct.

There are some, limited circumstances, where accepting gifts or benefits may be acceptable, even though the gift or benefit is not essentially 'token' or 'inconsequential' in kind (including moderate acts of hospitality) where:-

- (a) The gift or benefit is not obtained by virtue of the Councillors, staff members or agent of Council's official role, office or position; OR
- (b) Where a gift is given to a Councillor, staff member or agent of Council in a public forum in appreciation for the work, assistance or involvement of the person in their

official capacity or on behalf of the Council, and refusal to accept the gift would cause embarrassment or affront; OR

- (c) If there is no possibility that the recipient might be, or might appear to be, compromised in the process, OR
- (d) In circumstances generally approved by the General Manager, or on any other occasion with the formal written approval of the General Manager, preferably obtained beforehand.

Approval of the General Manager should only be given (for the above scenarios) where the acceptance of the gift is unlikely to be seen by a reasonable 'impartial observer' to create a conflict of interest, or influence the performance of duties or functions.

In situations where a gift or benefit is essentially a 'token' or 'inconsequential' in kind, and it likely to be seen by a reasonable 'impartial observer' to be simply a courtesy or innocent gesture then

Further guidance in more detail is provided herein as **Appendix 1**.

## **6. Review**

From time to time the Council may make changes to this Policy and associated procedures and guidelines to improve the effectiveness of its operation or to meet new provisions in any relevant legislation.

## **7. Status**

This Policy is to be approved by the General Manager and subsequently adopted by the Council before it comes into effect.

## **8. Further Assistance**

The Policy should be read in conjunction with *Part 5 'Personal Benefit'* of the NSW Office of Local Government Model Code of Conduct for Local Councils (2015)

Any Councillor who requires assistance with this Policy should contact The General Manager. Any staff member or agent of the Council who requires assistance with this Policy should in the first instance consult their supervisor or Council contact officer.

## Appendix 1. Gifts & Benefits Policy UMCC Policy 2018/04

### Further Guidance on Gifts and Benefits.

#### Gifts of Value Treatment:-

Councillors, staff, and agents:

- 1) Must never accept an offer of money, regardless of the amount.
- 2) Must in general not accept gifts and benefits that have more than a nominal or token value.
- 3) In circumstances where a gift of value cannot reasonably be refused or returned - accept the gift and disclose it immediately to the General Manager or his delegate, or the Chairperson. The gift will then be recorded in the Council's Gifts Register.

The gift (if not automatically 'consumed' in the process of accepting it) must be submitted intact to the General Manager for retention by the Council (if non-perishable) or consumption by the council (if perishable) but is not to be used/ consumed by any individual.

*[Disclosure if initially verbal must be followed by completion of the Record of Gifts and Benefits Form provided as Appendix 2.]*

- 4) Must take all reasonable steps to ensure that immediate family members do not receive gifts or benefits that could appear, to an impartial observer, to be an attempt to influence or secure a favour. Immediate family members ordinarily include parents, spouses, children and siblings.

**IMPORTANT NOTE:** Councillors and designated persons<sup>2</sup> must by law [IN ADDITION TO COMPLIANCE WITH THIS POLICY] disclose a description of any gift or gifts totalling a value exceeding \$500 made by the same person during a period of 12 months or less (this must be disclosed in the disclosure of interests returns – Section 449 LGA 1993).

<sup>2</sup> As defined under Section 441 of the Local Government Act 1993.

## Gifts of Value Examples

- 1) **Gifts of Value include goods and services such as:-** (a) tickets to major sporting events, (b) corporate hospitality at a corporate facility at a sporting venue, (c) discounted products for personal use, (d) the frequent use of facilities such as gyms, (e) use of holiday homes, (f) free or discounted travel and (g) free training sessions, **and/or**
- 2) **Gifts of Value include situations such as:-** where there is or maybe the appearance created that any person or body, through the provision of hospitality or benefits of any kind, is securing or attempting to influence or secure a favour from you or the council.

## Gifts Examples of 'token' or 'inconsequential' value.

Generally speaking, token gifts and benefits – in the specified settings - may include:

- 1) 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 at an industry function);
- 2) Free or subsidised meals, of a modest nature, and / or beverages provided infrequently (and / or reciprocally) that have been arranged primarily for, or in connection with, the discussion of official business;
- 3) Free meals, of a modest nature, and / or beverages provided to council officials who formally represent the Council at work related events such as training, education sessions, workshops;
- 4) Free meals, of a modest nature, and / or beverages provided to council officials who formally represent the Council at meetings with other councils or government agencies for whom their own representatives are being equally treated.
- 5) Refreshments, of a modest nature, provided at industry conferences where you are a speaker;
- 6) Branded ties, scarves, coasters, tie pins, diaries, chocolates, flowers and small amounts of beverages; and
- 7) Non-exclusive invitations to appropriate out of hours "cocktail parties" or social functions organised by groups, such as, council committees and community organisations.

**Appendix 2. Gifts & Benefits Policy UMCC Policy 2018/04**

**Record of Gifts and Benefits Form**

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**Reporting:**

1. Offer of Gift or Benefit

**Circle 1 OR 2 only**

2. Receipt of Gift or Benefit

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**Reporter:**

1. Councillor                    **OR**                    2. Staff Member                    **OR**                    3. Council Agent

**Report Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_/

**Name of Gift /Benefit Recipient:** \_\_\_\_\_

**Description of Gift Received:** \_\_\_\_\_

**Estimated Value (if known):** \_\_\_\_\_

**Name of Person offering / providing Gift:** \_\_\_\_\_

**Name of Organisation to which they belong:** \_\_\_\_\_

**Reason for Gift (if known):** \_\_\_\_\_

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**OFFICE USE ONLY**

**Recorded in Register (Tick when Registered)**

1 Noted                    **OR**                    2 Approved

**By General Manager:**

(Signature) \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_/