



# Councillor Gift Policy

## Purpose

Council must adopt and maintain a gift policy, which includes procedures for the maintenance of a gift register under section 138 of the Local Government Act 2020 (the Act). A gift policy must be adopted or amended by a formal resolution of Council. It cannot be delegated.

This policy supports Baw Baw Shire Council in ensuring good governance and open and accountable conduct in relation to the receipt, offer and decline of gifts by Councillors. It outlines when gifts may be accepted, when gifts are not to be accepted, and the details required for entry in Councils Gift Register.

This policy meets the Act's overarching governance principles of achieving the best outcomes for the municipal community and ensuring the transparency of Council decisions, actions and information outlined in section 9.

## Objectives

The objective of this policy is to formalise the Council's position on the receipt, offer and decline of gifts by Councillors and to ensure this is applied consistently to all Councillors.

The definition of gift remains the same across both the *Local Government Act 1989* and *Local Government Act 2020*, although the *Local Government Act 1989* did not have a requirement for a gift policy. The purpose of this new requirement is to complement the personal interest return requirements by recording gifts that may be below the threshold for disclosure in a personal interest return or that may have been received since the latest return was lodged.

The receipt of a gift or other benefit from a person or organisation can result in a conflict of interest situation arising between a Councillor's public duty and their personal interests. The Act requires Councillors to declare such conflicts of interest. The ongoing maintenance of a gift register ensures Councillors are always weighing up the implications of the offer or receipt of any gift.

In the application of this policy, Council will strive, where possible, to provide the community with access to information on the receipt of gifts by Councillors, any offers of gifts made to Councillors, and the maintenance and availability of Councils Gift register.

## Definitions

For the purposes of this policy, Council adopts the following definitions:

### Community

Community is a flexible term used to define groups of connected people. It is used to describe people of a municipality generally, including individuals or groups who live, work, play, study, visit, invest in or pass through the municipality. More specifically, it can refer to everyone affiliated with the municipality, or smaller groups defined by interest, identity or location, and not necessarily homogenous in composition or views. Different types of communities often overlap and extend beyond municipal boundaries. Communities may be structured, as in clubs or associations or unstructured, such as teens. Communities are flexible and temporary and subject to individual identity and location.

### Gift

An item or service given voluntarily, without payment, as to show favour to someone or make a gesture. This could include free or discounted goods and services such as meals, entertainment, travel, and accommodation, as well as monetary or items of a physical nature.

### Transparency

The availability of all information needed to collaborate, cooperate and make decisions effectively. Notably, "transparency" is also a human rights issue: the right to have the opportunity, without discrimination, to participate in public affairs (s.58 of The Act).

## Scope

This policy applies to to all elected Councillors while holding the office of Councillor. The policy is also relevant to all members of the community.

## Legislative context

This policy relates to the Local Government Act 2020 (the Act) and results directly from amendments incorporated when the Act received Royal Assent on 24 March 2020.

Specifically:

### *Division 4 – Gifts*

#### *137 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.*

### **Section 138 Councillor gift policy**

- 1. A Council must adopt a Councillor gift policy within the period of 6 months after this section comes into operation.*
- 2. A Councillor gift policy must include—*
  - (a) procedures for the maintenance of a gift register; and*
  - (b) any other matters prescribed by the regulations.*
- 3. A Council may review and update the Councillor gift policy.*

## **Related Acts, policies, and documents**

The following Acts also have relevance to this policy:

- *Charter of Human Rights and Responsibilities Act 2006*
- *Freedom of Information Act 1982*
- *Local Government Act 1989*
- *Local Government Act 2020*
- *Local Government (Governance and Integrity) Regulations 2020*
- *Privacy and Data Protection Act 2014*
- *Equal Opportunity Act 2010.*

The following Baw Baw Shire Council Policies have relevance to this policy:

- Council Expense Policy
- Councillor Code of Conduct
- Governance Rules
- Information Privacy Policy
- Complaints Handling Policy
- Customer Service Charter
- Community Engagement Policy (once adopted)
- Public Transparency Policy.

## Policy Detail:

### Prohibited Gifts

Any Gift that is inconsistent with community values and could bring a Councillor's integrity, or that of the Council into disrepute, such as accepting a gift could be perceived as an endorsement of a product or service should be declined. Councillors should also 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 favourable treatment. It is recommended that all Councillors refuse the following gift offers:

- Anonymous gifts – It is an offence for a councillor to receive an anonymous gift that has a value of or more than the gift disclosure threshold. The gift disclosure threshold is defined to be \$500 or a higher amount.
- Gifts from staff – Councillors should not accept gifts from Council employees regardless of their value, unless this can be defined as a 'corporate gift' from the CEO, under allowable gifts.
- Conflict of Interest – Where a real or perceived Conflict of Interest may be caused by receipt of a gift, a Councillor should decline the gift. Gifts exceeding \$500 may under Section 128 of the Act create a Material Conflict of Interest.
- Repeat offers – A Councillor should be conscious of repeat offers of gifts from single individual or entity, as the cumulative effect this may exceed the gift disclosure threshold or generate a sense of favour or conflict.
- Money, gift cards or shares – A Councillor should not accept money, or an item that could translate to money such as a gift card or share.
- Regulatory process – Where a Council regulatory process is underway, such as a planning permit application or infringement appeal, a Councillor should not accept any

gifts from any individual or group that may be involved with the permit application or regulatory activity.

- Bequests - 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 immediate family.
- Rewards or points - Councillors must not collect rewards for personal use via rewards programs for any Council related transactions, such as Fly Buys or Frequent Flyers points.
- 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. Where gifts are received or there are irregular approaches from suppliers, the Councillors must notify the Mayor and CEO and lodge a gift declaration form, so their refusal/action can be properly recorded.

### **Allowable Gifts**

It may be appropriate for Councillors to accept some gifts, where the circumstances, and value of the gift do not risk the reputation of Council or integrity of the Councillor. It is recommended that all Councillors may accept the following gift offers:

- Official Capacity - when a Councillor is acting in an official capacity and exercising their powers or performing their responsibilities under relevant legislation and their attendance at the event or function is related to providing good local governance for the municipality it may be appropriate to accept reasonable hospitality such as food or drinks whilst performing their duties or a small gift (of a value of no more than \$50) in recognition of their efforts.
- Professional Development - a Councillor has access to professional development under the Council Expense Policy, and when accessed in accordance with this policy, this is not considered a gift.
- Corporate Gifts - gifts may be given from the CEO to Councillors, but this is done sparingly, and only in recognition of significant events, such as years of service milestones (such as 10 years) or at the conclusion of the Council Term. Such gifts will be tokenistic in nature and used to commemorate the event or milestone and will not exceed a value of \$50.
- Gifts between Councillors - it may be acceptable for Councillors to share small gifts with their colleagues in the Councillor group. Care should be given to ensure equity and no sense of favouritism, such as a gift for each Councillor during the festive period, not just one Councillor. Such gifts should not exceed a value of \$50.

- Gifts that cannot be declined – there may be instances where declining a gift could cause offence due to cultural or other reasons, where a gift has been received in an official capacity, or where a gift has been received without notice and cannot be returned. In such an instance the gift should be declared, and in conjunction with the CEO arrangements can be made to donate or equitably share the gift, or the gift remains the property of the Council.
- Low value gifts – some gifts may hold such a low value (monetary or otherwise) that it may be appropriate to accept them. This could include but is not limited to, a branded note pad from an organisation, or flowers picked from a resident’s garden. Such gifts should not exceed a value of \$10.

### **Gift Register**

Councillors must be aware of their responsibilities relating to Gifts, Hospitality & Donations. For transparency and accountability purposes, gifts will be recorded in the Gift Register whether they are accepted, not accepted, or returned. Recording all offers of gifts, benefits and hospitality enables councils to monitor external approaches and possible attempts to inappropriately influence Councillors, as well as the the frequency and nature of both allowable and prohibited gifts.

Councillors must lodge a gift declaration in writing to the CEO and Manager Governance, and details will be included in the register. Individual declarations by Councillors will be kept in Council’s formal records, as well as being entered into the Gift Register.

The following details are required at a minimum in declarations relating to gifts:

- Name of Councillor,
- Name of person organisation offering gift,
- The date the offer was made,
- The value of the gift offer,
- Whether the gift was accepted, declined, or returned,
- The justification for this decision, and
- A signature from the relevant Councillor declaring the accuracy of the information.

The Gift Register is available for inspection by request.

### **Councillor Responsibilities**

It is the responsibility of each Councillor to declare gifts appropriately, adhere to this policy and to determine whether to accept or decline a gift.

Councillors must always use their own judgement when accepting or declining gifts, and should give consideration to how an impartial, fair-minded person would view the situation.

The GIFT Test can be a useful resource for Councillors when making a determination on whether to accept or decline a gift:

<b>G</b>	<b>Giver</b>	<b>Who is providing the gift, benefit, or hospitality and what is their relationship to me?</b> 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?
<b>I</b>	<b>Influence</b>	<b>Are they seeking to gain an advantage or influence my decisions or actions?</b> 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?
<b>F</b>	<b>Favour</b>	<b>Are they seeking a favour in return for the gift, benefit, or hospitality?</b> 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?
<b>T</b>	<b>Trust</b>	<b>Would accepting the gift, benefit or hospitality diminish public trust?</b> How would the public view acceptance of this gift, benefit, or hospitality? What would my colleagues, family, friends, or associates think?

There will be times where the offer of gifts is more prevalent, such as close to an election, approaching Christmas, or other holiday periods. It is recommended that Councillors be especially vigilant during these times, and ensure they understand their obligations in relation to this policy. The maintenance of the gift register will help Council to identify and monitor increases in the offer of gifts.

### Records of Gifts in Personal Interest Returns

Section 132 - 134 of the Act requires Councillors and nominated staff to submit initial and biannual personal interest returns, which detail the personal interests of Councillors. Sections 8, 9 and 10 of the Local Government (Governance and Integrity) Regulations 2020 describe the information that must be disclosed in an Initial and Bi-Annual Return. This includes details of other paid employment, and consultant or contractor arrangements. This form also requires Councillors to disclose any other interest which may give rise to a general conflict of interest or a material conflict of interest within the meaning of section 127 or 128 of the Act. The gift disclosure threshold for this purpose is defined to be \$500 or a higher amount, under section 128 of the Act.

Section 135 of *the Act* requires Council to make available a summary of the personal interest returns on Council's website and for inspection by request at a Council office.

### **Public Transparency**

In the application of this policy, Council will strive, where possible, to provide access to the public on matters of interest such as offered, declined, and accepted gifts. The register of gifts and the register of personal interest returns will be made available for inspection by the public by request.

### **Non-Compliance with this Policy and Further Information**

Accepting a prohibited gift may constitute misuse of a Councillor's position, and a breach of this policy may result in serious misconduct allegations for Councillors. 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.

If a member of the community wishes to question a matter relating to any gifts offered to, accepted or declined by Councillors, or to seek further information on this policy, this can be reported to Council's Governance team on 03 5624 2411 or at [bawbaw@bawbawshire.vic.gov.au](mailto:bawbaw@bawbawshire.vic.gov.au).

### **Monitoring, Evaluation and Review**

Council is committed to monitoring processes, information sharing and decision making in order to understand the overall level of success of the policy's implementation.

A periodic review of this policy will be undertaken to ensure its relevance is in line with public interest. A review will occur in line with a new Council Term as a minimum.

However, a Council can amend its policy at any time. In fact, it is important that the policy is at times reviewed during a Council Term to reflect improvements in Council practice.

Council will also regularly monitor the contents of the Gift Register. The Manager Governance, and a Manager from another Council department, will each review the Gift Register once per year to ensure consistent and diverse oversight. The Chief Financial Officer and Fraud Officer will be provided access to the register to review as required.



## Review

Approval date	24 February 2021
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Effective from	25 February 2021
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Next review date	November 2024
Responsible position	Manager Governance
Responsible Director	Corporate and Community Services
Version	1